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Serving the Greater Houston Area

FIRPTA for Foreign Sellers: The 15% Withholding Cannot Wait Until Closing Day

The withholding is not the final tax — but it must be planned at signing

Foreign sellers: discovering a 15% withholding on closing day is too late. Who it applies to, when it can be reduced or waived, and how to apply for the certificate ahead of time — so the withholding is planned at signing, not a surprise at closing.

FIRPTA for Foreign Sellers: The 15% Withholding Cannot Wait Until Closing Day

Decide at Signing

1. What the rule is

When a foreign person (a nonresident alien or foreign entity, in the tax-law sense) sells U.S. real estate, FIRPTA generally requires the buyer to withhold 15% of the gross sale price, remitted to the IRS through the title company after closing (Forms 8288 / 8288-A). The withholding is not the final tax — it is a prepayment: the seller settles up on the actual taxable gain when filing, and gets any excess back.

2. The buyer carries the withholding duty

Both sides need to know this: the legal duty to withhold falls on the buyer. If withholding was required but not done, the buyer can end up owing the seller's tax. So the seller's status must be established at the signing stage and written into the transaction plan — discovering it at the title company on closing day usually means a delayed closing.

3. The common exceptions and reductions

If the buyer will use the home as a residence and the price is \$300,000 or less, withholding is generally not required. Between \$300,000 and \$1,000,000 with buyer residence use, the rate can drop to 10%. A seller can also apply to the IRS in advance for a Withholding Certificate (Form 8288-B) to reduce or eliminate withholding — for example when the actual taxable gain is small or none — but IRS processing takes time, so the application has to start right after signing, not the week before closing.

4. For non-foreign sellers, one affidavit settles it

A seller who signs a Non-Foreign Affidavit — stating they are not a foreign person for tax purposes — is exempt from withholding; this is a routine document in most local sales. Note that the test is tax-residency status, not what a passport or visa looks like: green-card holders and those meeting the resident test are generally treated as tax residents. If status is genuinely unclear, have a CPA confirm it before deciding on withholding or a certificate. A foreign seller who also wants a 1031 exchange has a certificate route for that too — plan the two together.

If this is sitting inside your transaction right now, ask me — free consultation: (347) 774-5396 | owenrealestatetx.com

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