TitleTalk
News You Can Use
MSCTitle
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Dear Agents and valued customers,

On December 18, 2015, President Obama signed the **Protecting Americans from Tax Hikes Act of 2015** (PATH Act.) As part of the PATH Act, certain provisions concerning withholding under The Foreign Investment in Real Property Tax Act (FIRPTA) were amended. These amendments went into effect for transactions closing on and after February 16, 2016. In this month's newsletter you will find a summary of the changes and some useful tips when it comes to navigating them.

Sincerely,
Laura Bowers, Managing Director

FIRPTA Changes Affect Sales by Foreign Sellers

These amendments went into affect for transactions closing on and after February 16, 2016 and are summarized as follows:

1. Increase to 15%: Unless an exemption or reduced rate applies, the withholding amount has been increased from ten percent (10%) to fifteen percent (15%) of the sales price.
2. Personal Residence Exemption: If both of the following conditions are met:
    a. the buyer is obtaining property that will be used as the buyer's residence, and
    b. the sales price is $300,000 or less, then the buyer may elect to waive withholding under Section 1445(b)(5) of the Tax Code. This exemption and the requirements are unchanged from current law.
3. Reduced Rate of Withholding: If both of the following conditions are met:
    a. the buyer is acquiring property that will be used as the buyer's residence, and
    b. the sales price is greater than $300,000, but not more than $1,000,000, then the buyer may elect to withhold a reduced withholding amount equal to ten percent (10%) of the sales price rather than the unreduced rate of fifteen percent (15%).
        - FIRPTA uses the phrase "amount realized," which typically is the sales price; however, if you or any of the parties involved have any questions, the buyer should consult with legal counsel of buyer's choosing to ensure that the proper figure is being used when calculating the withholding amount.
        - The following chart may help agents and parties determine whether the Personal Residence Exemption or Reduced Rate of Withholding is available.

Certain provisions concerning withholding under The Foreign Investment in Real Property Tax Act were amended.

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Does buyer intend to use property as buyer's residence?	Yes (and buyer has elected to waive or reduce withholding)	No (or buyer has not so elected)
Sales Price is $300,000 or less	$0	15%
Sales Price is $300,001 - $1,000,000	10%	15%
Sales Price is greater than $1,000,000	15%	15%

It is important to remember that the responsibility and liability to the IRS—with respect to FIRPTA withholding—rests with the buyer, not the settlement agent or the transferor (seller.) **As such, the buyer is not required to make this election**, even if the facts may support an exemption or reduced rate.

In order to qualify for the exemption or the reduced rate, the buyer or a member of the buyer's family must reside at the property for at least 50% of the number of days the property is occupied by any person during each of the two 12-month periods following the date of closing. If the buyer fails to meet the occupancy requirements, the buyer may become liable to the IRS for the difference between the amount that was actually withheld, if any, and the amount that should have been withheld, plus interest and penalties.

While the buyer has the ultimate liability to the IRS, the collection and disbursement of funds to the IRS as part of the closing process creates a responsibility and potential liability for the settlement agent if the matter is not properly handled and documented.

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