by SARAH GULATI, ESQ.

Foreign Buying Flipside

With more foreign buying comes more foreign selling, so it's good to be familiar with FIRPTA

Much attention is paid to the purchase of U.S. real estate by foreign buyers, especially as Florida accounts for 23 percent* of the entire country's transactions involving foreign buyers. But what about the natural flipside: the sale of U.S. property by foreign sellers?

Since REALTORS® are increasingly encountering situations that involve foreign persons selling their U.S. real estate, it is increasingly important to be familiar with the requirements that the Foreign Investment in Real Estate Property Tax Act (FIRPTA) places on foreign sellers.

The sale of a U.S. real property interest by a foreign person is subject to FIRPTA income tax withholding. The act taxes non-U.S. investors on gains from U.S. real property investments, which FIRTPA defines as interests in land, buildings, mines, wells, crops, and timber. In addition, FIRPTA requires foreign sellers to provide a tax identification number.

When an individual foreign person sells U.S. real property, the transferee — usually a settlement officer or a closing agent — is required to withhold 10 percent of the "amount realized" on the sale. (There are special rules for foreign corporations that are not discussed in this article.) The amount realized is generally the amount paid for the property commonly known as the purchase price.

The 10 percent must be withheld at closing and be remitted to the Internal Revenue Service (IRS) no later than 20 days after the transfer.

There are some exceptions to the FIRPTA withholding, the most common of which is that the transferee is not required to withhold tax in a situation in which the buyer purchases real estate for use as his or her home and the purchase price is not more than $300,000.

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