

BUYER ADVISORY AND INSTRUCTION ON FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)

(For use with C.A.R. Form AS, Revised 6/17)

This form was created by the Greater San Diego Association of REALTORS® and is intended for use primarily in the San Diego County area. This form is not covered by the C.A.R. User Protection Agreement.

Property Address: _____ (“Property”)

Federal Law: Under the Foreign Investment in Real Property Tax Act (FIRPTA) you, as Buyer, are required to withhold up to fifteen percent (15%) of the gross sales price otherwise payable to Seller. You must pay up to 15% amount to the Internal Revenue Service (IRS) unless Seller provides you with a Seller’s Affidavit of Nonforeign Status and/or California Withholding Exemption (C.A.R. Form AS, Revised 6/17) (“Seller’s Affidavit”) stating:

1. Seller is not a nonresident alien;
2. Seller’s home address;
3. Seller’s taxpayer identification number (TIN).

Alternatively, the Seller may provide the Seller’s Affidavit to the escrow company or other “Qualified Substitute,” which will provide a statement to you that it is in possession of the Seller’s Affidavit. A Qualified Substitute is a person or entity responsible for closing the transaction, such as an escrow company, title company or Buyer’s broker, but not Seller’s broker.

Due to concern over identity theft, some Sellers refuse to disclose their taxpayer identification number (TIN) on the Seller’s Affidavit. Failure to disclose this information violates FIRPTA and the Residential Purchase Agreement between the parties. If Seller refuses to disclose such information, you should indicate this by initialing either or both of the options below:

- A. ____/____ Buyer instructs the escrow company to withhold up to 15% of the gross sales price and pay that amount to the IRS for the tax account of Seller;
- B. ____/____ Buyer instructs the escrow company to delay closing escrow until Buyer is in possession of (i) A properly completed FIRPTA Affidavit from Seller confirming that Seller is exempt from withholding, or (ii) a properly completed Qualified Substitute (“QS”) form confirming the same and signed under penalty of perjury. NOTE: If Listing Broker is also acting as the escrow holder (Broker-Owned Escrow), they are NOT eligible under the law to act as the QS.

In the event that Seller refuses to agree to A or B above, you should consult with an attorney concerning your legal rights, including against Seller.

If you, as Buyer, choose to close escrow without obtaining the complete Seller’s Affidavit, Qualified Substitute Declaration, or withholding up to 15% of the gross sales price, you are acting against the advice of your real estate broker and agent. In such case, you accept full responsibility to the IRS for up to 15% amount plus interest, and any applicable penalties and agree to release, indemnify and defend your agent and broker from all claims, loss or damages, including reasonable attorney’s fees that may arise due to your closing escrow without complying with the FIRPTA requirements.

California Law: Under California Revenue and Tax Code § 18662, Buyer is generally required to withhold three and one-third percent (3 1/3%) of the gross sales price otherwise payable to Seller and pay that amount to the Franchise Tax Board unless Seller provides Buyer with exemption information using the same Seller’s Affidavit noted above.

Further information on complying with FIRPTA and California Revenue and Tax Code § 18662 can be obtained from the escrow company. Buyer should review tax matters with a professional tax advisor.

Buyer is encouraged to read this Advisory carefully. By signing below, Buyer acknowledges that Buyer has read, understands, and received a copy of this Advisory.

Buyer _____ (Date)

Buyer _____ (Date)

THIS DOCUMENT IS FOR USE IN SIMPLE TRANSACTIONS AND NO REPRESENTATION OR WARRANTY IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY OF ITS PROVISIONS IN ANY TRANSACTION.

Copyright© 2005-2017. Greater San Diego Association of REALTORS® All Rights Reserved.



Published and distributed by:
Greater San Diego Association of REALTORS®
4845 Ronson Court, San Diego, CA 92111-1803
Tel: 800-525-2102 Web: www.sdar.com
Revision Date: November 2017

BA-FIRPTA
Page 1 of 1

OFFICE USE ONLY

Reviewed by Broker or Designee: _____
Date: _____