

# NOTICE TO BUYER REGARDING FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)

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

Dear Real Estate Buyer:

The United States in 1980 adopted FIRPTA. Under FIRPTA you, as a real estate Buyer, are legally obligated to withhold ten percent (10%) of the gross sales price otherwise payable to your Seller. You must pay that 10% amount to the Internal Revenue Service (IRS) unless your Seller is exempt. Your Seller is exempt if that Seller gives you a complete FIRPTA Affidavit signed by that Seller under penalty of perjury, which Affidavit must state:

1. the Seller is not a nonresident alien;
2. the home address of the Seller;
3. the taxpayer identification number of the Seller

Seller furnishes the Seller's Affidavit with his or her social security number to escrow or other qualified substitute as defined, who in turn, furnishes a statement to the Buyer stating, under penalty of perjury, that it has the Seller's Affidavit in its possession. A "qualified substitute" is a person responsible for closing the transaction, such as an escrow company, Title Company or the Buyer's agent, but not the Seller's agent.

Because of concern about identity theft, we have experienced Sellers who have refused to disclose to you that Seller's taxpayer identification number. Such failure to disclose violates the federal tax law and breaches Section 19 of your Residential Purchase Agreement. If your Seller refuses to disclose to you that Seller's taxpayer identification number, you should indicate by initialing any/all options below:

- A. \_\_\_\_\_ / \_\_\_\_\_ instruct the escrow company to withhold 10% of the gross sales price and pay that amount to the IRS for the tax account of the Seller;
- B. \_\_\_\_\_ / \_\_\_\_\_ instruct the escrow company to delay the closing of escrow for the sale of the real estate until the Seller provides you with a fully filled out and complete FIRPTA Affidavit.

In the event the Seller still refuses to comply with A or B above, \_\_\_\_\_ recommends Buyer to seek legal advice from your attorney concerning your rights to sue the Seller for specific performance and/or damages.

If you decide to consummate your purchase with the Seller without obtaining a complete FIRPTA Affidavit including the Seller's taxpayer identification number, or without withholding 10% of the gross sales price, then you have acted against the advice of \_\_\_\_\_. In such case you solely and personally accept and assume the risk of being liable to the IRS for that 10% amount plus interest, and penalties if applicable. You further agree to release, indemnify, defend and hold harmless, including reasonable attorney's fees, \_\_\_\_\_ and its agents from all claims, loss or damages that may arise due to Buyer closing escrow without fulfilling the FIRPTA requirements.

I have received this Notice, read it, understand it, and so agree.

Buyer \_\_\_\_\_ (Date) \_\_\_\_\_

Buyer \_\_\_\_\_ (Date) \_\_\_\_\_

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

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Reviewed by Broker or Designee: \_\_\_\_\_  
Date: \_\_\_\_\_