



DISCUSS FIRPTA AT THE START



Foreign Owners?

It is critical for the real estate professional to advise a foreign person selling a U.S. real property interest to address FIRPTA requirements with their tax professional at the start of the selling process to prevent issues or delays at closing.

The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA)

When a foreign-owned U.S. real property interest is sold, the Foreign Investment in Real Property Tax Act (FIRPTA) requires that a withholding deposit of 15 percent of the "amount realized" by the foreign person upon disposition be remitted to the Internal Revenue Service (IRS), unless one or more exemptions apply to the seller on the transaction.

What is the withholding rate?

- When the property will be used by the buyer as a primary residence, no withholding is required if the "amount realized" from the sale is \$300,00 or less.
- When the property will be used by the Buyer as a primary residence, and Buyer will sign affidavit of intent to occupy the property as a primary residence, a withholding rate of 10 percent applies provided the "amount realized" from the sale exceeds \$300,000 but does not exceed \$1,000,000.
- If the "amount realized" exceeds \$1,000,000, the withholding rate is 15 percent.
- When the property is not acquired to be the buyer's residence, the withholding rate is 15 percent of the "amount realized" from the sale.

How can the real estate professional prevent closing delays?

- Listing Agent - review listing agreement paragraph 21(i) with Seller regarding Foreign Status of Seller.
- Buyer's Agent - ask Listing Agent about the answer to the Listing Agreement paragraph 21(i) question.
- Advise Buyer and Seller to read TREC Contract Paragraph 20 carefully, it will be an action item at closing.
- Advise Buyer & foreign Seller of U.S. real property to seek advice from a licensed, qualified tax professional.

How can a seller facilitate the process?

- Answer Listing Agreement 21(i) question. Seek the advice of a licensed and qualified tax professional.
- Seller should read TREC Contract Paragraph 20 carefully, it will be an action item at closing.
- Be proactive. Determine if there is an exemption from withholding. Consider obtaining a withholding certificate from the IRS to determine what the seller actually owes. This could greatly reduce the amount withheld at closing. Withholding Certificate process can take 180 days or more. Advise the seller to start this process early.

This content is provided solely for informational and educational purposes and does not purport to offer tax advice or legal advice of any kind. A complete understanding of FIRPTA is critical to determining the buyer's tax withholding and reporting obligations. Questions concerning the applicability of the provisions of any state or federal tax legislation should be directed to a licensed and qualified tax professional.

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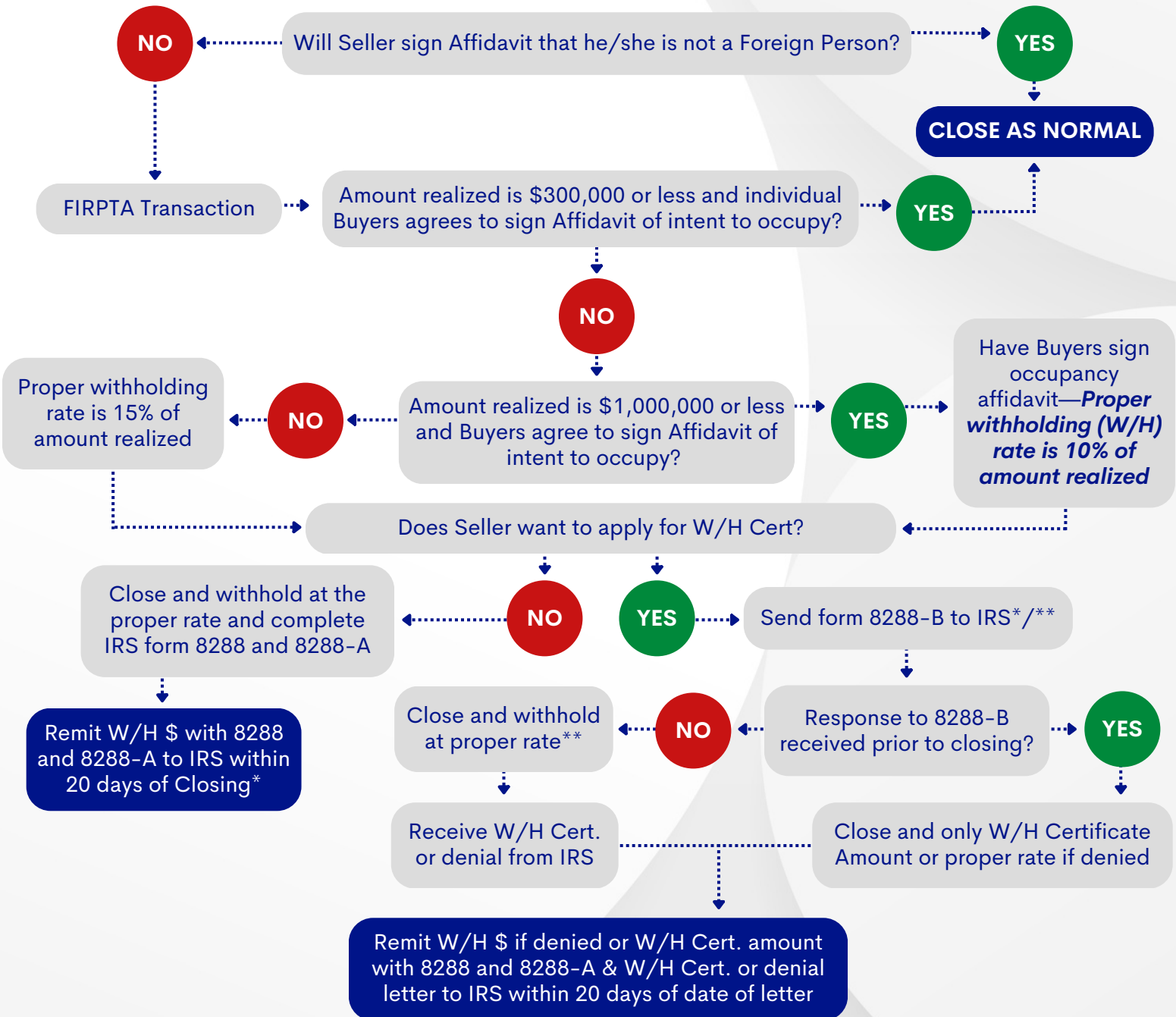
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FIRPTA

INDIVIDUALS PARADIGM

All Sellers are presumed to be Foreign Sellers - **Individuals**



*Form W-7 necessary; apply for ITIN with W-7 unless Seller has ITIN

**Form 8288-B necessary