



CLIENT ADVISORY TO BUYERS AND SELLERS

Seller Citizenship (FIRPTA)

Item No. 14 on NWMLS Forms 20, 21 and 28, Item No. 13 on NWMLS Form 25

Under IRS Code, for almost all sales of real property Sellers must certify their citizenship status and provide their address and social security numbers or tax identification numbers (collectively "social security numbers") to their Buyers. Buyers are required by Federal Law to either hold the Certification – Form 22E – containing all of the Sellers' social security numbers and addresses; or, as an alternative, Buyers may hold Escrow's certification that it holds a completed Form 22E, made under penalty of perjury.

Where one or more Seller is a "non-resident alien", the Buyer must assure that up to 15% of the Gross Sales Price is withheld and paid by the Closing Agent to the IRS at Closing. The payment is a deposit on the non-resident alien's Seller's IRS tax liability. The amount withheld varies by how many sellers are "non-resident aliens", the purchase price and the buyer's intended use for the property. The withholding is reported on and paid through IRS Forms 8288 and 8288A, which must be completed and filed by the Buyer within twenty days after the transfer of the property. IRS Form 8288B may be filed by the Buyer or Seller prior to or at the time of transfer to request a Withholding Certificate from the IRS stating that no withholding is required or the withholding is reduced.

ADVICE TO OUR CLIENTS

When the Sellers' IRS requirements are not met, Buyers can be financially liable to the IRS for amounts that should have been paid by their Sellers at Closing, together with penalties and interest. For this reason it is our recommendation that purchase agreements require the complete written certifications of all Sellers (Form 22E), including social security numbers, be delivered to Buyers or Escrow at Mutual Acceptance. If Escrow, it should immediately deliver to the Buyer its written statement that it holds the completed Form 22E. This is not the requirement of the NWMLS printed forms.

If one or more Sellers is a "non-resident alien" and a withholding is required to be paid to the IRS, then Buyers should be advised to promptly consult with their attorney or CPA to complete the IRS Forms 8288 and 8288A, and, if applicable, IRS Form 8288B. While escrow agents who are limited practice officers (LPOs) may have completed these forms in the past, the Washington Limited Practice Board has clarified that LPOs are not allowed to select and complete these IRS FIRPTA-related forms. It is strongly recommended that Buyers complete the applicable IRS forms as soon as they learn that a withholding is required, and in any case, prior to Closing to ensure that the correct amount is withheld and transmitted to the IRS by Escrow.

It is our strongest recommendation that Buyers either obtain a complete Form 22E or Escrow's statement that it holds it; or that they confirm the required withholding is done at Closing by escrow. CBBain will not take on this responsibility for Buyers.

Sellers who are not "non-resident aliens" but lack social security numbers are advised to consult their attorney or CPA on the advisability of obtaining a release from the IRS or a social security number prior to Closing should they wish to avoid the withholding requirement. Sellers cannot reasonably expect to sell their property without complying with the IRS requirements for Certification or Withholding.

Current NWMLS forms require escrow to obtain the certifications and hold them. Many escrow agents refuse to do so. Regardless, we do not believe Buyers are adequately protected through escrow since its failure to comply with the law will not excuse the Buyers' liability to pay some of the Sellers' taxes.

Items of Interest related to this Requirement

- Form 22E is attached and describes the exemption where the Gross Sales Price is less than \$300,000.00 and a Buyer or member of their family has plans to use the property as their residence. If the Price is over \$300,000.00 but not over \$1,000,000.00, and the Buyer intends to use the Property as a residence the withholding percentage is 10%.
- Where only some Sellers lack social security numbers less than 10% is required. For example, where the Sellers own the Property as a married couple but only one has a social security number 5% of the Gross Sales Price must be withheld.



- Buyers are not required to verify the information on Form 22E.
- Brokers and others who help provide false information can be liable for some of the Sellers' tax.
- Closings have failed where Sellers have not addressed their obligations in time for Closing; usually because Sellers did not have enough cash to make the deposit and meet their other obligations.
- An incomplete Certification (Form 22E) is not sufficient to avoid liability.
- Foreign business entities, trusts, estates or other entities who are not non-resident aliens provide tax identification numbers instead of social security numbers.

Sellers and Buyers are advised to consult their attorney and/or CPA.

Again, *CBBain* will not undertake to assure Buyers have met their requirement to hold a completed Form 22E with social security numbers, to complete the IRS Forms 8288, 8288A, or (if applicable) 8288B, or confirm the required withholding is done at Closing.

Acknowledged:

SELLER

BUYER

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