

# BUYER'S ADVISORY ON FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)

(SDAR Form BA-FIRPTA, Revised 8/12) (For use with C.A.R. Form AS, Revised 4/12)

Property Address: \_\_\_\_\_ (“Property”)

**This form is created by the San Diego Association of REALTORS® and is not covered by the California Association of REALTORS® User Protection Agreement. This form is intended for use in San Diego County.**

Federal Law: Under the Foreign Investment in Real Property Tax Act (FIRPTA) you, as Buyer, are required to withhold ten percent (10%) of the gross sales price otherwise payable to Seller. You must pay that 10% 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 4/12) (“Seller's Affidavit”) stating:

1. Seller is not a nonresident alien;
2. Seller's home address;
3. Seller's Social Security Number, Federal Employer Identification Number or California Corporation Number.

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 Social Security No., Federal Employer Identification No., or California Corporation No. 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 10% 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 Seller provides the escrow company with a complete Seller's Affidavit, and escrow company provides Buyer with a Qualified Substitute Declaration of Possession of Transferor's Affidavit of Nonforeign Status (C.A.R. Form QS, Revised 4/09) (Qualified Substitute Declaration”).

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 choose to close escrow without obtaining the complete Seller's Affidavit, Qualified Substitute Declaration, or withholding 10% 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 the 10% 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)

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