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Are there any legal ramifications if my client is not a U.S. citizen and is selling his residential property located in Florida?

Yes. Your client may be subject to the Foreign Investor in Real Property Tax Act (FIRPTA). FIRPTA requires that the buyer involved in your transaction withhold 10 percent of the "amount realized" by a seller who is a "foreign person" in connection with the subject purchase and sale transaction. The buyer or the agent is then required to remit the 10 percent withholding tax and the required I.R.S. forms to the I.R.S. within 20 days of the closing.

My client is a non-U.S. citizen who is selling his residential property located in Florida. He does not want 10 percent of his net sales proceeds withheld by the buyer. Are there any exemptions to FIRPTA?

Yes. It is important that you discuss FIRPTA with your client early in the transaction in order to enable your client to take advantage of some of the exemptions available to foreign per-

sons under FIRPTA.

There are three common exemptions to the act. First, if your client is not considered a "foreign person" under FIRPTA, he is exempted from compliance with its provisions. Your client would have to furnish a non-foreign certificate stating that he is not a foreign person as defined under FIRPTA because he is (1) a U.S. citizen, (2) a resident alien, or (3) a domestic corporation, partnership, trust, or estate.

Second, your client would be exempt from FIRPTA if the buyer meets the residency requirement. The withholding requirement is waived if the buyer is acquiring the property for use as a primary or secondary residence (not as an investment) and the amount realized is \$300,000 or less. The buyer will be required to sign a residency certificate at closing affirming the amount realized and that the buyer has definite plans to reside in the property for at least 50 percent of the number of days that the property is in use during the first two years from the closing date.

Third, although FIRPTA requires 10 percent to be withheld, the amount withheld cannot exceed your client's maximum tax liability. Accordingly, although not a complete exemption, your client may request the I.R.S. to determine his maximum tax liability with respect

to the sale of his property. Your client can accomplish this by filing an IRS Form 8828-B Withholding Certificate. This form may be filed at any time prior to closing. Please note, however, that your client will not be able to file for the withholding certificate without a Taxpayer Identification Number. You should inform your client to immediately apply for a Taxpayer Identification Number in case he plans to utilize this exemption.

My client is the buyer in a purchase and sale transaction involving a foreign seller who is subject to FIRPTA. I have reason to believe my buyer is falsifying a Residency Certificate in order help the seller avoid the withholding tax by stating that he is purchasing the property as his primary residence when I know it is for investment purposes. What should I do?

Although it is the buyer's primary responsibility to determine the foreign person's status and to withhold the tax, you may also be held liable for the tax under certain circumstances. If you have knowledge that the Non-Foreign Certification or Residency Certificate is false, you must provide notice of

this falsity to the other party and closing agent. If the notice is not provided, you may be held liable for the tax that should have been withheld to the extent of your compensation from the purchase and sale transaction. If a foreign seller is involved in a residential property purchase and sale transaction, it is recommended that both the buyer and seller consult with a real estate attorney to ensure that all parties are legally protected and fully comply with the provisions of FIRPTA. ●

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