

FIRPTA UPDATE

FIRPTA WITHHOLDING INCREASED TO 15%

EFFECTIVE FOR CLOSINGS DATES¹ ON OR AFTER FEBRUARY 16, 2016²

On December 18, 2015, President Obama signed into law the "Protecting Americans from Tax Hikes Act of 2015" (the "**Act**"), which makes significant changes to the Foreign Investment in Real Property Tax Act of 1980 ("**FIRPTA**").³ The Act increases the FIRPTA withholding rate from 10% to **15%** under certain circumstances.

General highlights of changes to the FIRPTA law relating to transfer of real property by a foreign seller⁴:

Sales Price over \$1,000,000:

- ▶ If the sales price is over \$1,000,000, then **15%** FIRPTA Withholding applies.

Sales Price over \$300,000 up to \$1,000,000:

- ▶ If the sales price is over \$300,000 and does not exceed \$1,000,000⁵, and the buyer will be using the property as his or her residence, then 10% FIRPTA Withholding applies.
- ▶ If the sales price is over \$300,000 and does not exceed \$1,000,000, and the buyer will **NOT** be using the property as his or her residence, then **15%** FIRPTA Withholding applies.

Sales Price \$300,000 or less:

- ▶ If the sales price is \$300,000 or less, and the buyer will be using the property as his or her residence, then FIRPTA Withholding does **NOT** apply (0% Withholding).⁶
- ▶ If the sales price is \$300,000 or less, and the buyer will **NOT** be using the property as his or her residence, then **15%** FIRPTA Withholding applies.

¹ Closing date in Hawaii is generally the date of recordation and disbursement of funds.

² Effective date of this FIRPTA provision of the Act "shall apply to dispositions after the date which is 60 days after the date of the enactment of the Act." The date of enactment of the Act is December 18, 2015.

³ The Act includes other significant changes to FIRPTA and other tax laws which are not addressed in this material.

⁴ Subject to any FIRPTA exemptions or exclusions under the Internal Revenue Code. "Foreign seller" is a general reference to nonresident alien individual or foreign corporation and is not a defined term under the Internal Revenue Code.

⁵ Sales price can be exactly \$1,000,000.00 but may not exceed this amount.

⁶ This rule pertaining to \$300,000 or less sales price is an existing provision under the Internal Revenue Code 26 USC 1445(b)(5). Under this specific provision (26 USC 1445(b)(5)), a property is "acquired for use as a residence if you or a member of your family has definite plans to reside in the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer" and the buyer must be an individual. Please consult with a tax professional regarding the definition of "residence" under the new FIRPTA law under the Act.

Legal Disclaimer: This material has been prepared for general information purposes only. The information presented is not legal, financial, tax or professional advice, is not to be acted on as such, and is subject to change without notice. While we make reasonable efforts to furnish accurate and up-to-date information, no warranty, expressed or implied, is made regarding accuracy, adequacy, completeness, legality, reliability or usefulness of any information. Please consult with a tax professional regarding the changes in the tax law.

OAHU BRANCHES

201 Merchant St, Ste 2100, Honolulu 96813 | (808) 536-0404
4211 Waialae Ave, Ste 8050, Kahala 96816 | (808) 380-6767
609 Kailua Rd, Ste 204, Kailua 96734 | (808) 230-8080
1001 Kamokila Blvd, Ste 151, Kapolei 96707 | (808) 380-3640
98-211 Pali Momi St, Ste 805, Aiea 96701 | (808) 485-0505

Trusted everywhere,
every day.

MAUI BRANCHES www.FidelityMaui.com

285 W. Kaahumanu Ave, Ste 103, Kahului 96732 | (808) 893-0556
12 Kiopa'a St, Ste 101, Pukalani (Upcountry) 96768 | (808) 573-0110
727 Wainee St, Ste 102, Lahaina 96761 | (808) 661-4960
3750 Wailea Alanui Dr, Ste 22 EW, The Shops at Wailea 96753 | (808) 891-2404

KONA BRANCH

75-1000 Henry St, Ste 202, Kailua-Kona 96740 | (808) 334-0202

www.FidelityHawaii.com