

# Foreign Investor Guide



*Buying Or Selling  
Property in Arizona  
As  
A Foreign Investor*



**EQUITY**

TITLE AGENCY, INC.

*A Member of the Orange Coast Title  
Family of Companies*

# THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)

FIRPTA's objective is to ensure non-resident aliens file U.S. income tax returns and pay taxes on profits generated in the U.S.

FIRPTA requires that 10% of the total amount realized (generally the **Sales Price**) be withheld and forwarded to the IRS whenever the Seller is a "Foreign Person" (Non-Resident Alien of the United States). It also applies to foreign corporations, trusts, etc.

FIRPTA imposes the obligation to withhold upon the **BUYER**, and the IRS may hold the Buyer, Agent(s) or the Title Company responsible for any taxes owed by the foreign seller if no withholding is done.

The required withholding may be applied to *any* tax liability owed by the Seller...not just capital gains taxes, but also to include such taxes as payroll tax, income tax, etc. The IRS keeps the held funds until a determination is made regarding any taxes owed by the Seller. After proper filling of applicable tax returns and deduction of applicable taxes, the remaining funds are returned to the Seller by the IRS.

Buyer and Seller must direct the title company to withhold under FIRPTA, Otherwise, title company will not close the transaction without one of the following;

- Exemption Certificate from IRS indicating no taxes are due.
- Fully executed Foreign Investor Certificate declaring an exemption.

Seller must have a US Tax ID number in order to withhold. The Seller should make application for a TIN as soon as possible, or the TIN may be applied for at the same time the withholding is made at close of escrow. If Seller can not, or will not, provide a U.S. TIN then Seller will not receive any refund of money held. NOTE: Line 127-130 of the Purchase Contract states "**Seller agrees to comply with IRS reporting requirements. If applicable, Seller agrees to complete, sign and deliver to title company a certificate indicating whether Seller is a foreign person or a non-resident alien pursuant to the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller acknowledge that if the Seller is a foreign person, the Buyer must withhold a tax equal to 10% of the purchase price, unless an exemption applies.**"

Heavy penalties and fines are possible for failure to withhold, and for improper withholding or failure to send the funds to the IRS within 20 days after the closing. The IRS will look to the buyer for ALL taxes, penalties etc.

## **DETERMINING IF FIRPTA APPLIES**

If the seller is *not* a "foreign person" he/she is exempt. A "W-9" or other non-foreign Affidavit may be used to document the exemption. This exemption can be signed by the following:

1. U.S. Citizen
2. U.S. Green Card Holder

A non-citizen who meets the substantial presence test. (A detailed explanation of time requirements can be obtained at the IRS website)

## **Common Exemptions to FIRPTA**

1. Transferor furnishes Foreign Investor Certificate stating an exemption, signed under penalty of perjury. Actual knowledge, by any party to the transaction, that the affidavit is false can subject that party to prosecution and financial liability.
2. Transferor receives a "Qualifying Statement" (often referred to as an exemption or withholding certificate) stating that no taxes are owed or stating the amount of taxes owed, which must be paid at the closing. This must come from the IRS.
3. The property is being sold for less than \$300,000 **AND** the Buyer or a member of the buyer's family intends to occupy the property for at least ½ of the first 2 years during which the property is occupied.

<http://www.irs.gov/instructions/iw7/ar01.html>  
<http://www.irs.gov/pub/irs-pdf/fw7.pdf>

## Application for IRS Individual Taxpayer Identification Number

OMB No. 1545-0074

▶ See instructions.  
 ▶ For use by individuals who are not U.S. citizens or permanent residents.

**An IRS individual taxpayer identification number (ITIN) is for federal tax purposes only.**

| FOR IRS USE ONLY |  |  |  |
|------------------|--|--|--|
|                  |  |  |  |
|                  |  |  |  |

**Before you begin:**

- **Do not submit this form if you have, or are eligible to get, a U.S. social security number (SSN).**
- **Getting an ITIN does not change your immigration status or your right to work in the United States and does not make you eligible for the earned income credit.**

**Reason you are submitting Form W-7.** Read the instructions for the box you check. **Caution:** If you check box **b, c, d, e, f, or g, you must file a tax return with Form W-7 unless you meet one of the exceptions** (see instructions).

- a  Nonresident alien required to get ITIN to claim tax treaty benefit
  - b  Nonresident alien filing a U.S. tax return
  - c  U.S. resident alien (based on days present in the United States) filing a U.S. tax return
  - d  Dependent of U.S. citizen/resident alien } Enter name and SSN/ITIN of U.S. citizen/resident alien (see instructions) ▶ .....
  - e  Spouse of U.S. citizen/resident alien } .....
  - f  Nonresident alien student, professor, or researcher filing a U.S. tax return or claiming an exception
  - g  Dependent/spouse of a nonresident alien holding a U.S. visa
  - h  Other (see instructions) ▶ .....
- Additional information for a and f: Enter treaty country ▶ ..... and treaty article number ▶ .....

|                                   |               |             |           |
|-----------------------------------|---------------|-------------|-----------|
| <b>Name</b><br>(see instructions) | 1a First name | Middle name | Last name |
|                                   | 1b First name | Middle name | Last name |

|                                    |   |  |  |
|------------------------------------|---|--|--|
| <b>Applicant's mailing address</b> | 2 Street address, apartment number, or rural route number. <b>If you have a P.O. box, see page 4.</b> |  |  |
|                                    | City or town, state or province, and country. Include ZIP code or postal code where appropriate.      |  |  |

|  |  |  |  |
|--|--|--|--|
| <b>Foreign (non-U.S.) address</b><br>(if different from above)<br>(see instructions) | 3 Street address, apartment number, or rural route number. <b>Do not use a P.O. box number.</b>  |  |  |
|  | City or town, state or province, and country. Include ZIP code or postal code where appropriate. |  |  |

|                          |                                      |                  |                                       |  |
|--------------------------|--------------------------------------|------------------|---------------------------------------|--|
| <b>Birth information</b> | 4 Date of birth (month / day / year) | Country of birth | City and state or province (optional) | 5 <input type="checkbox"/> Male<br><input type="checkbox"/> Female |
|--------------------------|--------------------------------------|------------------|---------------------------------------|--|

|  |   |                                     |  |  |
|--|---|-------------------------------------|--|--|
| <b>Other information</b>   | 6a Country(ies) of citizenship  | 6b Foreign tax I.D. number (if any) | 6c Type of U.S. visa (if any), number, and expiration date |  |
|  | 6d Identification document(s) submitted (see instructions) <input type="checkbox"/> Passport <input type="checkbox"/> Driver's license/State I.D.<br><input type="checkbox"/> USCIS documentation <input type="checkbox"/> Other .....  |                                     |  |  |
|  | Issued by: No.: Exp. date: / / Entry date in United States / /  |                                     |  |  |
|  | 6e Have you previously received a U.S. temporary taxpayer identification number (TIN) or employer identification number (EIN)?<br><input type="checkbox"/> <b>No/Do not know.</b> Skip line 6f.<br><input type="checkbox"/> <b>Yes.</b> Complete line 6f. If more than one, list on a sheet and attach to this form (see instructions). |                                     |  |  |
| 6f Enter: TIN or EIN ▶ ..... and Name under which it was issued ▶ .....          |   |                                     |  |  |
| 6g Name of college/university or company (see instructions) ..... Length of stay |   |                                     |  |  |

|                  |  |                           |              |
|------------------|--|---------------------------|--------------|
| <b>Sign Here</b> | Under penalties of perjury, I (applicant/delegate/acceptance agent) declare that I have examined this application, including accompanying documentation and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I authorize the IRS to disclose to my acceptance agent returns or return information necessary to resolve matters regarding the assignment of my IRS individual taxpayer identification number (ITIN), including any previously assigned taxpayer identifying number. |                           |              |
|                  | Signature of applicant (if delegate, see instructions)   | Date (month / day / year) | Phone number |

|                               |   |                                      |   |
|-------------------------------|---|--------------------------------------|---|
| Keep a copy for your records. | Name of delegate, if applicable (type or print) | Delegate's relationship to applicant | <input type="checkbox"/> Parent <input type="checkbox"/> Court-appointed guardian<br><input type="checkbox"/> Power of Attorney |
|-------------------------------|---|--------------------------------------|---|

|                                    |                                |                           |             |
|------------------------------------|--------------------------------|---------------------------|-------------|
| <b>Acceptance Agent's Use ONLY</b> | Signature                      | Date (month / day / year) | Phone ( )   |
|                                    | Name and title (type or print) | Name of company           | Fax ( )     |
|                                    |                                |                           | EIN         |
|                                    |                                |                           | Office Code |

## What a Title Company Does

### Requests a Title Report and Policy

Title Report- A report showing the condition of title before a sale or loan transaction. After completion of the transaction, a title insurance policy is issued.

Policy- Title insurance is insurance against loss resulting from defects of title to a specifically described parcel of real property. Defects may run to the fee (Chain of Title) or to encumbrances on the property.

Pays Off Existing Loans - The title company pays off existing loans when so ordered.

Taxes and Insurance The title company prorates the taxes and insurance upon instructions from the buyer and the seller.

Computes Interest on Loans

Signing of Documents - Assists the buyer and seller when signing documents.

Recording Documents -The title company records the appropriate documents with the county office, giving public notice.

Disbursement -The title company disburses the documents and monies to each party involved

**What is Title Insurance?** It is a contract of indemnity which guarantees that the title is as reported and, if not reported and the owner is damaged, the title policy covers the insured for their loss up to the amount of the policy. Title insurance assures owners that they are acquiring marketable title. Title insurance is designed to eliminate risk or loss caused by defects in title from the past. Title insurance provides coverage only for title problems which were already in existence at the time the policy was issued.

## Escrow:

Very simply defined, an escrow is a deposit of funds, a deed or other instrument by one party for the delivery to another party upon completion of a particular condition or event.

Whether you are the buyer, seller, lender or borrower, you want the assurance that no **funds** or property will change hands until ALL of the instructions in the transaction have been followed. The escrow holder has the obligation to safeguard the funds and/or documents while they are in the possession of the escrow holder, and to disburse funds and/or convey title only when all provisions of the escrow have been complied with.

The principals to the escrow : buyer, seller, lender, **borrower** : cause escrow instructions, to be created, signed and delivered to the escrow officer. If a broker is involved, he will normally provide the escrow officer with the information necessary for the preparation of your escrow instructions and documents.

The escrow officer will process the escrow, in accordance with the escrow instructions, and when all conditions required in the escrow can be met or achieved, the escrow will be "closed." Each escrow, although following a similar pattern, will be different in some respects, as it deals with your property and the transaction at hand.

The duties of an escrow holder include; following the instructions given by the principals and parties to the transaction in a timely manner; handling the funds and/or documents in accordance with the instruction; paying all bills as authorized; responding to authorized requests from the principals; closing the escrow only when all terms are in accordance with instructions.

## **The Title Search**

Title companies work to eliminate risks by performing a search of the public records or through the title company's own plant. The search consists of public records, laws and court decisions pertaining to the property to determine the current recorded ownership, any recorded liens or encumbrances or any other matters of record, which could affect the title to the property. When a title search is complete, the title company issues a preliminary report detailing the current status of title.

## **The Preliminary Report**

A preliminary report contains vital information which can affect the close of escrow: Ownership of the subject property; where the current owners hold title; matters of record that specifically affect the subject property or the owners of the property; a legal description of the property and an informational plat map.

**Reviewing the Preliminary Title Report.** The preliminary report should be reviewed immediately with special attention to the following areas...

- ◇ Verify the ownership vesting. Make sure the names on the report are the same as the names on the purchase contract.
- ◇ Read the informational notes for important facts about the property.
- ◇ Carefully review the exceptions: bonds, deeds of trust, current taxes, CC&R's and easements.
- ◇ Look for surprises. If you can't locate an easement, if an unexpected deed of trust appears, etc., call your escrow officer right away. Let your title company be the problem solver. Top notch escrow officers and title companies go out of their way to resolve problems quickly and accurately.

# IMPORTANT “GOOD FUNDS” REQUIREMENTS

This notice contains IMPORTANT information that may be CRITICAL to your closing. Please read and follow to the letter.

Arizona is a “Good Funds” State. This means no funds may be disbursed from an escrow account until those funds are physically available for withdrawal in the escrow agent’s Trust Account. All Customer deposits and Lender’s loan proceeds checks will need to clear the payor’s bank prior to closing. BECAUSE PERSONAL CHECKS ARE DIFFICULT TO VERIFY, AS PAID BY THE ISSUING BANK, ALL PARTIES ARE ADVISED THAT PERSONAL CHECKS WILL NOT BE ACCEPTED FOR ANY DEPOSITS INTO ESCROW EXCEPT AS INITIAL EARNEST DEPOSIT. BEFORE THE CLOSE OF ESCROW OR ANY REFUND OF THE DEPOSITED AMOUNT, ALL CHECK DEPOSITS PLACED INTO ESCROW, INCLUDING CASHIER’S CHECKS AND OFFICIAL CHECKS, MUST BE VERIFIED PAID BY THE ISSUING BANK BEFORE THEY ARE CONSIDERED GOOD FUNDS. THIS MAY REQUIRE YOU TO PROVIDE A COPY OF THE PAID INSTRUMENT.

Below are **minimum guidelines** for determining availability of Good Funds. The timeframes indicated are **business days** after the funds have been deposited into our bank, **NOT AFTER RECEIPT BY THE ESCROW OFFICER!**

|   |  |   |
|---|--|---|
| <p><b>Available the of Day of <u>Bank Deposit</u></b></p> <p>Electronic Transfer/Wired Funds<br/>(Required For <b>same day</b> Loan &amp; Closing Funds)<br/>Equity Title Agency Checks</p> <p><b>Available One Day <u>After Bank Deposit</u></b></p> <p>Cashier’s, Certified and Teller’s checks<br/>from federally insured banks only**</p> <p><b>** (Must be verified by the Customer’s Bank<br/>prior to COE)</b></p> |  | <p><b>Available 3 Days <u>After Bank Deposit</u></b></p> <p>Local Personal Checks**<br/>Credit Union Checks (Local)**<br/>Corporate Checks (Local)**<br/>Official Checks (Local)</p> <p><b>Available 7 Days <u>After Bank Deposit</u></b></p> <p>All Non-Local checks**<br/>Non FDIC Insured Checks**</p> <p><b>** Earnest deposits only. No personal<br/>checks are accepted as additional deposit</b></p> |
|---|--|---|

**MONEY ORDERS, TRAVELER’S CHECKS, DRAFTS, FOREIGN BANK CHECKS, THIRD PARTY CHECKS AND CASH ARE NEVER ACCEPTABLE FORMS OF DEPOSIT.**

**WIRED FUNDS ARE BEST TO AVOID A DELAY IN YOUR CLOSINGS.**

# Ways to Take Title in Arizona

| <b>COMMUNITY PROPERTY</b>  | <b>JOINT TENANCY WITH RIGHT OF SURVIVORSHIP</b>   | <b>COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP</b>                     | <b>TENANCY IN COMMON</b>  |
|--|---|--|---|
| Requires a valid marriage between two persons  | Parties need not be married; may be more than two joint tenants                           | Requires a valid marriage between two persons                            | Parties need not be married; may be more than two tenants in common   |
| Each spouse holds an undivided one-half interest in the estate   | Each joint tenant holds an equal and undivided interest in the estate (unity of interest) | Each spouse holds an undivided one-half interest in the estate           | Each tenant in common holds an undivided fractional interest in the estate. Can be disproportionate, e.g., 20% and 80%; |
| One spouse cannot partition the property by selling his or her interest                                | One joint tenant can partition the property by selling his or her joint interest          | One spouse cannot partition the property by selling his or her interest  | Each tenant's share can be conveyed, mortgaged or devised to a third party  |
| Requires signatures of both spouses to convey or encumber  | Requires signatures of all joint tenants to convey or encumber the whole                  | Requires signatures of both to convey or encumber                        | Requires signatures of all tenants to convey or encumber the whole  |
| Each spouse can devise (will) one-half of the community property                                       | Estate passes to surviving joint tenants outside of probate                               | Estate passes to the surviving spouse outside of probate                 | Upon death the tenant's proportionate share passes to his or hers by will or intestacy                                  |
| Upon death the estate of the decedent must be "cleared" through probate, affidavit or adjudication     | No court action required to "clear" title upon the death of joint tenant(s)               | No court action required to "clear" title upon the first death           | Upon death the estate of the decedent must be "cleared" through probate, affidavit or adjudication                      |
| Both halves of the community property are entitled to a "stepped up" tax basis as of the date of death | Deceased tenant's share is entitled to a "stepped up" tax basis as of the date of death   | Both halves of the community property are entitled to a "stepped up" tax | Each share has its own tax basis  |

**Note:** Arizona is a community property state. Property acquired by a husband and wife is presumed to be community property unless legally specified otherwise. Title may be held as "Sole and Separate." If a married person acquires title as sole and separate, his or her spouse must execute a disclaimer deed to avoid the presumption of community property. Parties may choose to hold title in the name of an entity, e.g., a corporation; a limited liability company; a partnership (general or limited), or a trust. Each method of taking title has certain significant legal and tax consequences; therefore, you are encouraged to obtain advice from an attorney or other qualified professional.