

Foreign Buyers & Sellers



DAAR Dulles Area
Association of REALTORS®
The Association of Choice for Real Estate Professionals™

Foreign Buyers & Sellers

Outline

- I. Introduction: Working with international clients presents challenges not necessarily encountered on a typical deal. There are obvious logistical challenges, potential legal considerations and lending/financial hurdles, among others.

- II. Sellers:
 - A. Foreign Investment in Real Property Tax Act:
 1. Background: Prior to 1980, foreign (non-resident alien) real estate owners could sell U.S. real property and effectively avoid paying any tax on the disposition.
 2. The enactment of FIRPTA assured that gains on the disposition of US real property could be taxed before funds moved outside the taxing jurisdiction of the US.
 3. Individual Taxpayer Identification Number (ITIN). IRS issues ITINs to foreign nationals and others who have federal tax reporting or filing requirements and do not qualify for SSNs.
 4. Withholding requirement placed on the buyer.
 - a. 15% of gross sales price over \$1M.
 - b. 10% of gross sales price if over \$300K but does not exceed \$1M and will be used by buyer as residence.
 - c. No withholding if \$300k or less and will be buyer's residence.
 - d. Regardless of sales price, if buyer does not intend to use as residence, 15% withholding.
 5. Sellers may apply for withholding certificate from the IRS. This takes time, so get an early start.
 6. IRS Forms 8828 and 8288-A used at closing. *See Exhibits A & B.*
 - a. 8288: The tax withheld on the acquisition of a U.S. real property interest from a foreign person is reported and paid using Form 8288. Form 8288 also serves as the transmittal form for copies A and B of Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests. The form must be filed by the 20th day after the date of the transfer.

- b. 8288-A: The withholding agent must prepare Form 8288–A for each person from whom tax has been withheld. Copies A and B of Form 8288–A are attached to Form 8288.
 - c. Regarding number 5 above, if an application for a withholding certificate is submitted on Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests, to the IRS before or on the date of a transfer and the application is still pending with the IRS on the date of transfer, the correct withholding tax must be withheld, but does not have to be reported and paid immediately. The amount withheld (or lesser amount as determined by the IRS) must be reported and paid within 20 days following the day on which a copy of the withholding certificate or notice of denial is mailed by the IRS. *See Exhibit C.*
7. Contract/Closing Docs: Sellers make an affirmative statement in our standard contract as to their status on this issue. Additionally, an affidavit is signed at closing – FIRPTA affidavit – wherein the seller states that they are not a non-resident alien.

III. Buyers:

A. Financing:

- 1. Down Payment: Potentially larger down payment requirements.
 - a. More risk – harder to pursue non-resident in event of default.
- 2. Seasoning: Having money in an established bank account for a certain period of time-foreign assets are challenging to document.
- 3. Obtaining credit reports can be challenging. Lenders may have to find alternative ways to assess risk. Many foreign buyers may not have established US credit history.
 - a. Even for permanent resident and non-permanent resident aliens, they may not have enough US credit history.
- 4. Individual Tax Payer Identification Number (ITIN). See II. A. 3. above.
- 5. One size does not fit all – buyer profile matters. Different Visa types have different underwriting requirements. For example, someone with a work visa with history of US employment and SSN presents a different underwriting situation than a foreign national buying second home with no US employment history.
 - a. Note: There are approximately 185 different types of visas. H-1B and other H Series visas are common work visas. Other series include E, G, L and O, most of which will be accepted as proof of legal residency for mortgage purposes.

IV. Issues for Both:

A. Logistics

1. Parties may be remote
2. Getting POA's signed if necessary
3. Notarization in foreign countries
 - a. Embassy or consulate-appointments may be necessary.
4. Initiating wire transfers timely
5. Original documents delivered to US. Internationally, DHL may be only option and depending on country, could take up to 4-5 business days.

B. Cultural

1. Parties may be uncomfortable or unfamiliar with process of selling/buying real estate in U.S.
2. Expectations not aligned with actuality of process.
3. Language barriers

Questions/Notes: