



EFFECTIVE FEBRUARY 16TH FIRPTA WITHHOLDING CHANGES

A withholding obligation under section 1445 is generally imposed on the buyer when a U.S. real property interest is acquired from a foreign person.

FIRPTA CHANGES under the PATH Act

The changes to 26 U.S.C. § 1445 result in the following:

1. Unless an exemption or reduced rate applies, the withholding amount has been increased from 10% to 15%.
2. For properties being acquired by the transferee not for use as a residence 15% must be withheld.
3. For properties being acquired by the transferee for use as a residence the following rates apply:
 - a. If the sales price is \$300,000 or less withholding is not required (0%)(See: 26 U.S.C. § 1445(b)(5));
 - b. If the sales price is greater than \$300,000, but not more than \$1 million 10% must be withheld (See: 26 U.S.C. 1445(c)(4)); &
 - c. If the sales price is greater than \$1 million 15% must be withheld.
4. The PATH Act was signed on December 18, 2015, effective for all transfers after February 16, 2016.

So What Does the Condition That the Buyer Acquire the Property For Use As a Residence Mean?

Under Treasury Regulation Section 1.1445-2(d), the buyer is acquiring the property for use as a residence if on the date of the transfer the buyer(s) (or the buyer's family) has definite plans to reside at the property for at least 50 percent of the number of days that the property is used by any person during each of the first two 12-month periods following the date of the transfer. The number of days that the property will be vacant is not taken into account in determining the number of days such property is used by any person.

Buyer Intends to Use Property as a Residence per IRS Guidelines?

	Yes	No
\$0 to \$300,000	0%	15%
\$300,001 to \$1,000,000	10%	15%
Over \$1,000,000	15%	15%



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