

# FIRPTA Withholding Rate on Real Estate Sales Increased to 15%

**By: Robert Elias, Esq**

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Florida lawyers and closing agents must withhold and remit more proceeds from the sale of real property by foreign nationals due to legislative changes that affect the Foreign Investment in Real Property Tax Act (commonly known as “FIRPTA”). The changes took effect on February 16, 2016.

FIRPTA essentially requires foreign persons to pay U.S. income tax on the gains they make from selling U.S. real estate. The duty is effectively on the buyer and closing agent to deduct a portion of the sales price and remit the withheld proceeds (and report the sale) to the Internal Revenue Service. The policy behind the law is to insure foreign nationals file the required tax returns relating to the property sales. Presuming that they do, and the actual tax is less than the amount withheld, the foreign person would be entitled to an appropriate refund.

Under the changes, the withholding rate for sales by foreign nationals increased from 10% of the total sales price to 15%. The increased withholding does not impact existing FIRPTA exemptions, including the exemptions for sales under \$300,000 for the sale of primary residence or vacant land. Additionally, the current 10% withholding

amount still applies to sales of primary residences where the sales price is less than \$1 million.

Buyers can withhold less than the statutory amount only if they obtain, prior to the completion of the sale, a determination of the specific amount of tax owed by the foreign national using IRS Form 8288-B. This is commonly referred to as a “reduced withholding certificate”. While the closing agent is the party that actually remits the funds to the IRS, the buyer is held legally responsible to insure that it happens. Additionally, until the tax is paid in full, the government obtains a security interest in the real property.

## Based on the updated law:

- If the amount realized (generally the sales price) is \$300,000 or less, AND the property will be used by the buyer as a primary residence, the withholding rate is 0%.
- If the amount realized exceeds \$300,000 but does not exceed \$1 million, AND the property will be used by the buyer as a primary residence, the withholding rate is 10% on the full amount realized.

- If the amount realized exceeds \$1 million, then the withholding rate is 15% on the entire amount, regardless of use by the buyer.

Buyers (and their closing agents) seeking to avail themselves of exemptions should document (under the penalty of perjury) the buyer’s intent to use the property as a residence. A buyer who fails to comply with FIRPTA could be liable for any additional withholding tax, as well as penalties and interest.

With certain exceptions and qualifiers, the FIRPTA withholding tax no longer applies to the sale of U.S. property that is either held directly (or indirectly through) one or more partnerships, to distributions received from a real estate investment trust (“REIT”), or held by a qualified foreign pension fund or a non-U.S. entity that is owned by a qualified foreign pension fund. Furthermore, a publicly traded REIT can assume that shareholders owning less than 5% of the REIT’s stock are U.S. persons unless the REIT has knowledge to the contrary.



## The Elias Law Firm can help

If you have any questions about your Florida real estate transaction and/or FIRPTA withholding, feel free to contact The Elias Law Firm at 305-823-2300, via email at [relias@eliaslaw.net](mailto:relias@eliaslaw.net), or visit us on the web at [www.eliaslaw.net](http://www.eliaslaw.net).



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About the Author: Robert Elias, Esq. leads a boutique law firm specializing in all aspects of residential and commercial real estate transactions, corporate law and asset protection/estate planning. He is active in a variety of charitable and civic endeavors throughout South Florida and maintains an AV PreEminent Lawyer Rating from Martindale-Hubbell, the highest peer rating for professional excellence. Mr. Elias was named to the exclusive list of South Florida’s Top Rated Lawyers by American Lawyer Media.



## Atlantic | Pacific Companies and Blue Arch Advisors Close a \$120MM Fund For Multifamily Investments

Atlantic | Pacific Companies (A|P) and Blue Arch Advisors announced today the closing of their co-sponsored fund, Blue Atlantic Partners, which will focus on investing in existing multifamily communities in the Southeast and Southwest U.S.

The fund closed with \$120 million of equity capital commitments which together with anticipated leverage is expected to have buying power of over \$350 million. Investors in the fund include institutions and high net worth individuals from the U.S. and overseas.

“We received commitments from partners who were looking for an operating partner in the multifamily space with long and successful track record of property management and long term value creation” said Greg Ward, Man-

aging Partner with the fund from A|P.

The fund’s strategy will be to purchase existing multifamily communities that can benefit from A|P’s property management expertise and value add/renovation program. The fund’s target locations are affluent suburbs of major cities in the Southeast and Southwest U.S.

“We are grateful for the support from our investors and very excited with our pipeline of investment opportunities,” said Gil Hermon, Managing Partner with the fund from Blue Arch Advisors.

For more information about A|P and its array of real estate services including development, property management, affordable housing, and construction, visit [www.apmanagement.net](http://www.apmanagement.net) or call (800) 918-1145.

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