Legal Line Question: FIRPTA Certificates

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Q. I often hear a purchaser's attorney request a "FIRPTA certificate" at closings. What does this certificate say and why is it important?

A. "FIRPTA," which stands for the Foreign Investment in Real Property Tax Act of 1980, is a federal law enacted to ensure that a "foreign person" who sells property in the United States pay the appropriate federal taxes associated with such sale. A "foreign person" for federal income tax purposes is generally any person who is neither a resident alien (holder of a green card) nor a United States citizen. FIRPTA is interesting in that it places a withholding requirement on the purchaser. More specifically, purchasers of real property from a foreign person are required to withhold 10% of the amount realized by the foreign person on the transfer (generally the purchase price of the property) and submit those funds to the IRS to ensure that federal taxes are actually paid by the foreign person. If the actual federal tax liability is less than the amount withheld, the foreign person seller may be entitled to receive a refund from the IRS after filing a federal tax return. Alternatively, the foreign person seller can apply for a Withholding Certificate from the IRS prior to the closing that would instruct the purchaser to withhold an amount less than 10%.

In transactions where the seller is not a foreign person, the purchaser will request that the seller sign a certificate (a FIRPTA certificate) at the closing stating that the seller is not a foreign person and that there is no withholding obligation under FIRPTA. If the seller signs a FIRPTA certificate, the purchaser will not be required to withhold a portion of the sales proceeds