

FIRPTA AMENDMENTS IMPACTING REAL ESTATE CLOSINGS ON OR AFTER FEBRUARY 16, 2016

On December 18, 2015, the PROTECTING AMERICANS FROM TAX HIKES ACT OF 2015 (the "PATH Act") became law. The PATH Act enacts significant changes to the FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT of 1980 ("FIRPTA").

Most significant to our real estate closings is that the PATH Act increases the amount that must be withheld from proceeds of certain real property sales by foreign persons from 10 percent of the "amount realized" to 15 percent of the amount realized in closings that occur on or after February 16, 2016. The amount realized is typically the sales price.

For closings prior to February 16, 2016, 10 percent of the amount realized on the sale of real property is withheld unless:

- The transferor provides a properly prepared certification, under penalty of perjury, that the transferor is not a foreign person;
- The IRS has provided a withholding certificate that no withholding is required or a reduced withholding is allowed; or
- The individual transferee provides an affidavit attesting that the transferee acquiring the property for use as a residence and the amount realized (typically the sales price) is no more than \$300,000.

For closings on or after February 16, 2016, either 10 or 15 percent of the amount realized on the sale of real property will be withheld unless one of the exceptions above applies, as follows:

- For any sale in which the buyer/transferee does NOT intend to use the property as a residence, 15% of the amount realized will be withheld.
- For any sale in which the amount realized is up to \$1,000,000 (over \$300,000) and the buyer/transferee does intend to use the property as a residence, 10% of the amount realized.

Buyer Intends To Use as a Residence?	Yes	No
\$300,000 and Under	\$0	15%
\$300,001 - \$1,000,000	10%	15%
Over \$1,000,000	15%	15%

