

## **Form 22E Revisions**

### **Important -- Additional Update to FIRPTA Certification (Form 22E)**

#### *Rate of Tax Increasing for Certain Sales*

The Foreign Investment in Real Property Tax Act ("FIRPTA") provides that the disposition of a U.S. real property interest by a foreign person for the purposes of U.S. income taxation is subject to income tax withholding. Under FIRPTA, the buyer is responsible for determining if the seller is a foreign person and if the buyer fails to do so, the buyer could be liable for the tax.

Effective February 17, 2016, FIRPTA withholding will be imposed at a rate of 15% (an increase from 10%) on the amount realized from the sale (i.e. the purchase price). There are notable two exceptions:

- If the amount realized does not exceed \$300,000 and the buyer will use the property as the buyer's personal residence – then there is no tax withheld.
- If the amount realized exceeds \$300,000, but does not exceed \$1,000,000 and the buyer will use the property as the buyer's personal residence – then the tax withheld is 10%.

Accordingly, if the seller is subject to FIRPTA (i.e. the seller is a foreign person for the purposes of U.S. income taxation) – the buyer needs to review the FIRPTA Certification (Form 22E) and decide if either one of these exceptions apply. If one of the exceptions apply, buyer should check the applicable box and sign the bottom of the form. If neither exception applies, the buyer should not sign the bottom of the form.

The January 2016 update to Form 22E failed to take into account the required certification for buyer's personal residence for sales not exceeding \$1,000,000. Members must use the revised Form 22E (revision 2/16) for transactions that close on or after February 17, 2016. For transactions that close before February 17<sup>th</sup>, you may use the prior version of Form 22E (revision 11/14 or 1/16).

The above revisions to Form 22E will be published in TransactionDesk on Wednesday, February 10<sup>th</sup>.  
NWMLS

We do not have a timeframe for ZipForm.