UNDERWRITING BULLETIN
2016-03

To: ALL FLORIDA OFFICES AND AGENTS OF
Chicago Title Insurance Company
Commonwealth Land Title Insurance Company
Fidelity National Title Insurance Company

From: FNTG Florida Underwriting Department

Date: January 26, 2016

Re: **FIRPTA Withholding Increase to 15% on Certain Sales – Effective 2-16-2016**

THIS IS AN INFORMATIONAL BULLETIN AND NOT TAX ADVICE. AGENTS ARE ADVISED TO HAVE THEIR CUSTOMERS AND CLIENTS CONTACT THEIR RESPECTIVE TAX PROFESSIONALS FOR TAX ADVICE. The following information is our best interpretation of the recent legislation, which may change as we receive further clarification.

FIRPTA Withholding on Real Estate Sales by Foreign Sellers

The Foreign Investment in Real Property Tax Act (FIRPTA), 26 U.S.C. § 1445, has long required a purchaser of real estate in the U.S. from a non-resident foreign seller to withhold a percentage of the gross sales price to secure payment of the applicable U.S. Income Tax. Subject to certain exceptions, the base amount to generally be withheld has historically been ten percent (10%) of the gross sales price.

"PATH ACT" Increases 10% Withholding to 15% of the Gross Sales Price On Certain Sales

In December 2015, new legislation known as the Protecting Americans from Tax Hikes Act of 2015 ("PATH ACT") has changed the FIRPTA withholding amount effective February 16, 2016. Section 324 of the PATH ACT changes the base FIRPTA withholding rate to fifteen percent (15%).

The Exemption Still Applies for Sales up to and Including $300,000 With Intent to Occupy the Property as a Residence

The existing exemption from **ANY** withholding, where the purchaser will occupy the land as a residence and the gross sales price is $300,000.00 or less will still apply. The purchaser has to intend to occupy the property as his/her residence for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of purchase.

15% Withholding Applies for Sales up to and Including $300,000 and Purchaser Does NOT Intend to Occupy the Property as a Residence

If the gross sales price is $300,000.00 or less and the purchaser does not intend to occupy the property as a residence, then the 15% withholding rate applies.

10% Withholding Applies for Sales between $300,000 and$1,000,000 With Intent to Occupy as a Residence

When the purchaser intends to use the property as a residence and the gross sales price is greater than $300,000.00 but no more than $1,000,000.00, the withholding rate shall be 10% of the gross sales price. The purchaser has to intend to occupy the property as his/her residence for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of purchase.

15% Withholding Applies for Sales in Excess of $300,000 When the Purchaser Does NOT Intend to Occupy the Property as a Residence

If the gross sales price exceeds $300,000.00 and the purchaser does NOT intend to occupy the property as a residence, then the 15% withholding rate applies.

No Further IRS Regulations/Forms at This Time

At present the IRS has not issued any regulations with regard to the above referenced changes to FIRPTA. Nor, has it issued any new regulations as to criteria for the intended use of the property as a primary residence, occasional residence, or exclusive residence. We anticipate that the IRS will be revising their forms as may be necessitated by these FIRPTA changes.

Illustrative Chart – Withholding Percentage of Gross Sales Price

Intend to use as a residence	Sales price is $300,000 or less	Sales price is greater than $300,000 & not over $1,000,000	Sales price is over $1,000,000
Yes	Exemption	10% withholding	15% withholding
No	15% withholding	15% withholding	15% withholding