CALIFORNIA ASSOCIATION OF REALTORS®

SELLER'S AFFIDAVIT OF NONFOREIGN STATUS AND/OR CALIFORNIA WITHHOLDING EXEMPTION

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)
AND CALIFORNIA WITHHOLDING LAW
(Use a separate form for each Transferor)
(C.A.R. Form AS, Revised 1/03)

SAMPLE

USE ONLY FOR ESCROWS CLOSING ON OR AFTER JANUARY 1, 2003

Internal Revenue Code ("IRC") Section 1445 provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a "foreign person." California Revenue and Taxation Code Section 18662 provides that a transferee of a California real property interest must withhold tax if the transferor: **(i)** is an individual (unless certain exemptions apply); or **(ii)** is any entity other than an individual ("Entity") if the transferor's proceeds will be disbursed to a financial intermediary of the transferor, or to the transferor with a last known street address outside of California. California Revenue and Taxation Code Section 18662 includes additional provisions for corporations.

I understand that this affidavit may be disclosed to the Internal Revenue Service and to the California Franchise Tax Board by the transferee, and that any false statement I have made herein (if an Entity Transferor, on behalf of the Transferor) may result in a fine, imprisonment or both.

SAMPLE

1. **PROPERTY ADDRESS** (the address of the property being transferred): _____
2. **TRANSFEROR'S INFORMATION:**
   Full Name _____
   Telephone No. _____
   Address _____
   (Use HOME address for individual transferors. Use OFFICE address for Entities: corporations, partnerships, limited liability companies, trusts and estates.)
   Social Security No., Federal Employer Identification No., or California Corporation No. _____
3. **AUTHORITY TO SIGN:** If this document is signed on behalf of an Entity Transferor, THE UNDERSIGNED INDIVIDUAL DECLARES THAT HE/SHE HAS AUTHORITY TO SIGN THIS DOCUMENT ON BEHALF OF THE TRANSFEROR.
4. **FEDERAL LAW:** I, the undersigned individual, declare under penalty of perjury that, for the reason checked below, if any, I am exempt (or if signed on behalf of an Entity Transferor, the Entity is exempt) from the federal withholding law (FIRPTA):
   - ☐ (For individual Transferors) I am not a nonresident alien for purposes of U.S. income taxation.
   - ☐ (For corporation, partnership, limited liability company, trust, and estate Transferors) The Transferor is not a foreign corporation, foreign partnership, foreign limited liability company, foreign trust, or foreign estate, as those term are defined in the Internal Revenue Code and Income Tax Regulations.
5. **CALIFORNIA LAW:** I, the undersigned individual, declare under penalty of perjury that, for the reason checked below, if any, I am exempt (or if signed on behalf of an Entity Transferor, the Entity is exempt) from the California withholding law:
   - ☐ The total sale price for the property is $100,000 or less.

   For individual or revocable/grantor trust Transferors only:
   - ☐ The property being transferred is in California and was my principal residence within the meaning of IRC Section 121.
   - ☐ The property is being, or will be, exchanged for property of like kind within the meaning of IRC Section 1031.
   - ☐ The property has been compulsorily or involuntarily converted (within the meaning of IRC1033) and I intend to acquire property similar or related in service or use to be eligible for non-recognition of gain for California income tax purposes under IRC Section 1033.
   - ☐ The transaction will result in a loss for California income tax purposes.

   For Entity Transferors only:
   - ☐ (For corporation Transferors) The Transferor is a corporation qualified to do business in California, or has a permanent place of business in California at the address shown in paragraph 2 ("Transferor's Information").
   - ☐ (For limited liability company ("LLC") or partnership Transferors) The Transferor is an LLC or partnership and recorded title to the property being transferred is in the name of the LLC or partnership and the LLC or partnership will file a California tax return to report the sale and withhold on foreign and domestic nonresident partners as required.
   - ☐ (For irrevocable trust Transferors) The Transferor is an irrevocable trust with at least one trustee who is a California resident and the trust will file a California tax return to report the sale and withhold when distributing California source taxable income to nonresident beneficiaries as required.
   - ☐ (For estate Transferors) The Transferor is an estate of a decedent who was a California resident at the time of his/her death and the estate will file a California tax return to report the sale and withhold when distributing California source taxable income to nonresident beneficiaries as required.
   - ☐ (For tax-exempt Entity and nonprofit organization Transferors) The Transferor is exempt from tax under California or federal law.

By _____ Date _____
(Transferor's Signature) (Indicate if you are signing as the grantor of a revocable/grantor trust.)

_____
Typed or printed name — Title (If signed on behalf of entity Transferor)

SAMPLE

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Reviewed by _____ Date _____

EQUAL HOUSING OPPORTUNITY

SAMPLE

Agent: Ed Harpe **Phone: (805)4979539** **Fax: (805)** **Prepared using WINForms® software**
Broker: Property Management Realty **2535 E Thousand Oaks Blvd, Thousand Oaks** **CA 91362**

IMPORTANT NOTICE: An Affidavit should be signed by each individual or entity Transferor to whom or to which it applies. Before you sign, any questions relating to the legal sufficiency of this form, or to whether it applies to you or to a particular transaction, or about the definition of any of the terms used, should be referred to an attorney, certified public accountant, or other professional tax advisor, the Internal Revenue Service, or the California Franchise Tax Board. For further information on federal guidelines, see C.A.R. Legal Q & A *"Federal Withholding: The Foreign Investment in Real Property Tax Act,"* and/or IRS Publication 515 or 519. For further information on state guidelines, see C.A.R. Legal Q & A *"California Nonresident Withholding,"* and/or California FTB Pub. 1016.

SAMPLE

FEDERAL GUIDELINES

FOREIGN PERSONS DEFINED: The following general information is provided to assist sellers in determining whether they are "foreign persons" for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), IRC §1445. FIRPTA requires a buyer to withhold and send to the Internal Revenue Service 10% of the gross sales price of a United States (U.S.) real property interest if the seller is a foreign person. No withholding is required for a seller who is a U.S. person (that is, not a foreign person). In order for an individual to be a U.S. person, he/she must be either a U.S. citizen, or a U.S. resident alien. The test must be applied separately to each seller in transactions involving more than one seller. Even if the seller is a foreign person, withholding will not be required in every circumstance.

SAMPLE

NONRESIDENT ALIEN INDIVIDUAL. An individual whose residence is not within the U.S. and who is not a U.S. citizen is a nonresident alien. The term includes a nonresident alien fiduciary. An alien actually present in the U.S. who is not just staying temporarily (i.e., not a mere transient or sojourner), is a U.S. resident for income tax purposes. An alien is considered a U.S. resident and not subject to withholding under FIRPTA if the alien meets either the **green card test** or the **substantial presence test** for the calendar year.

GREEN CARD TEST. An alien is a U.S. resident if the individual was a lawful permanent resident of the U.S. at any time during the calendar year. This is known as the "green card test."

SUBSTANTIAL PRESENCE TEST. An alien is considered a U.S. resident if the individual meets the substantial presence test for the calendar year. Under this test, the individual must be physically present in the U.S. on at least: (1) 31 days during the current calendar year; and (2) 183 days during the current year and the two preceding years, counting all the days of physical presence in the current year but only 1/3 the number of days present in the first preceding year and 1/6 the number of days present in the second preceding year.

DAYS OF PRESENCE IN THE U.S. TEST. Generally, a person is treated as physically present in the country at any time during the day. However, if a person regularly commutes to work in the U.S. from a residence in Canada or Mexico, or is in transit between two points outside the U.S. and is physically present in the country for less than 24 hours, he/she is not treated as present in the U.S. on any day during the transit or commute. In addition, the individual is not treated as present in the U.S. on any day during which he/she is unable to leave the U.S. because of a medical condition which arose while in the U.S.

EXEMPT INDIVIDUAL. For the substantial presence test, do not count days for which a person is an exempt individual. An exempt individual is anyone in the following categories:

(1) An individual temporarily present in the U.S. because of (a) full-time diplomatic or consular status, (b) full-time employment with an international organization or (c) an immediate family member of a person described in (a) or (b).

(2) A teacher or trainee temporarily present in the U.S. under a "J" visa (other than as a student) who substantially complies with the requirements of the visa. An individual will not be exempt under this category for a calendar year if he/she was exempt as a teacher or trainee or as a student for any two calendar years during the preceding six calendar years.

(3) A student temporarily present in the U.S. under an "F" or "J" visa who substantially complies with the requirements of the visa. Generally, a person will not be exempt as a student for any calendar year after the fifth calendar year for which he/she was exempt as a student, teacher or trainee. However, the individual may continue to be exempt as a student beyond the fifth year if he/she is in compliance with the terms of the student visa and does not intend to permanently reside in the U.S.

CLOSER CONNECTION TO A FOREIGN COUNTRY. Even if an individual would otherwise meet the substantial presence test, that person is not treated as meeting the test for the current calendar year if he/she:

(1) Is present in the U.S. on fewer than 183 days during the current year, and

(2) Has a tax home in a foreign country and has a closer connection to that country than to the U.S.

SPECIAL RULES: It is possible to be both a nonresident alien and a resident alien during the same tax year. Usually this occurs for the year a person arrives in or departs from the U.S. Other special provisions apply to individuals who were U.S. residents for at least three years, cease to be U.S. residents, and then become U.S. residents again.

NONRESIDENT ALIEN INDIVIDUALS MARRIED TO U.S. CITIZENS OR RESIDENT ALIENS may choose to be treated as resident aliens for most income tax purposes. However, these individuals are considered **nonresidents** for purposes of withholding taxes.

A FOREIGN PERSON OR PARTNERSHIP is one that does not fit the definition of a domestic corporation or partnership. A domestic corporation or partnership is one that was created or organized in the U.S., or under the laws of the U.S., or of any U.S. state or territory.

SAMPLE

GUAM AND U.S. VIRGIN ISLANDS CORPORATIONS. A corporation created or organized in or under the laws of Guam or the U.S. Virgin Islands is not considered a foreign corporation for the purpose of withholding tax for the tax year if:

(1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons, and

(2) At least 20% of the corporation's gross income is derived from sources within Guam or at least 65% of the corporation's income is effectively connected with the conduct of a trade or business in the U.S. Virgin Islands of the U.S. for the 3-year period ending with the close of the preceding tax year of the corporation, or the period the corporation has been in existence if less.

A NONRESIDENT ALIEN TRUSTEE, ADMINISTRATOR OR EXECUTOR of a trust or an estate is treated as a nonresident alien, even though all the beneficiaries of the trust or estate are citizens or residents of the U.S.

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