



NEW LAW INCREASES HARPTA FROM 5% TO 7.25%

Applies to all transactions closing on or after September 15, 2018*

For transaction closing on or before September 14, 2018, the 5% HARPTA applies

The Hawaii Real Property Tax Act (HARPTA): Hawaii Revised Statutes §235-68, seeks to ensure that non-residents of Hawaii- individuals and entities- report and pay applicable capital gains tax when they sell Hawaii real property interests.

As a general rule, every buyer/transferee of real property must withhold **7.25%** percent of the "amount realized" (generally the sales price) and transmit that amount to the State Tax Department within 20 days after closing unless an exemption applies and the buyer/transferee receives proof of that exemption. It is not Escrow's responsibility to withhold the amount, but does so as directed by the parties in the purchase contract. It is the seller's burden to prove that an exemption applies and to provide that proof to the buyer. A common exemption applies when the seller is a Hawaii "resident" as defined by Hawaii Revised Statutes (HRS) 235-1.

Although Escrow Officers do not give legal or tax advice, understanding the process they must follow in order to comply with withholding can help avoid delays and frustrating situations. This flyer discusses the situation where a non-resident seller applies for a certificate for a reduction or waived withholding prior to closing.

- As a general rule, if Escrow does not receive a properly completed N-289 to provide to the buyer before closing or an N-288B withholding certificate, Escrow will withhold the appropriate amount from seller's proceeds and forward it to the State Tax Department.
- In some circumstances, the seller may obtain a withholding certificate from the State Tax Department wherein the State approves a waiver or reduction of the withholding amount because the seller shows that it will not recognize gain on the transfer or there will be insufficient proceeds to pay the withholding after payment of all costs, including payoffs.
- The application, Form N-288B, must be filed with the State Tax Department no later than 10 working days prior to closing (an application filed later than 10 working days prior to the scheduled closing date will not be accepted). As a general rule, Escrow will withhold unless an approval for waiver or adjustment form is received from the State Tax Department prior to closing.
- Escrow does not complete the Form N-288B, and it is recommended that the seller work with a qualified attorney or tax advisor.
- Form N-288B instructs that if two or more non-resident transferors jointly transfer a Hawaii real property interest, a separate Form N-288B should be filed for each non-resident transferor/seller.

*Note: September 15, 2018 is a Saturday, so the new HARPTA LAW will apply to most standard real estate transactions closing on or after Monday, September 17, 2018.
DISCLAIMER – This flyer is for general informational purposes only, and should not be relied upon for any legal, business, economic, or tax decision. It is not intended to provide legal or business advice. Before making any decision regarding this matter, you should consult with a qualified advisor.



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IS THE SELLER A HAWAII RESIDENT? ¹



The Hawaii Real Property Tax Act (HARPPTA) - Hawaii Revised Statutes §235-68, seeks to ensure that non-residents of Hawaii - individuals and entities - report and pay applicable capital gains tax when they sell Hawaii real property interests. HARPPTA law requires the buyer to withhold **7.25%** of the sales price unless exceptions apply.

Seller completes Form N-289. If approved by Buyer, no HARPPTA withholding.

Does Seller qualify for an exemption from HARPPTA or a possible reduction (e.g., selling at a loss)?



Is Seller engaged in 1031 exchange or qualify for other state or federal law exceptions?

Is Seller selling property at a loss or recognizing a gain of less than 7.25%?

Is sales price \$300,000 or less and did seller use property as principal residence for the last 12 months?



Seller completes Form N-289. If approved by Buyer, no HARPPTA withholding.



Form N-288B must be submitted to Department of Taxation at least 10 business days prior to closing date. Department will determine the HARPPTA amount to be paid by Seller.



Seller completes Form N-289. If approved by Buyer, no HARPPTA withholding.

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¹ Hawaii entities and trusts may also apply.
² If 7.25% withheld, Seller can apply for early refund by submitting Form N-288C.

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