

# FEDERAL STANDARD ABSTRACT TITLE NEWS

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## THE FOREIGN INVESTMENT IN REAL PROPERTY TAX

Generally, in real estate conveyances if the seller is a foreign person, then the purchaser must deduct 10% from the amount realized (gross sales price) from the conveyance and forward it to the IRS as payment of the Foreign Investment In Real Property Tax (FIRPTA). This applies to all dispositions of US real property by foreign persons and 1031 like-kind exchanges which include the receipt of money or other property. If seller is a foreign person and does not pay the FIRPTA tax, then the IRS can assess the tax against the purchaser.

FIRPTA does not apply to green card holders, but does apply to corporations, LLCs, LLPs, partnerships, etc. and in the case of single member LLC, LLP REIT or Subchapter S corporations; the IRS will consider the natural person owner's citizenship as dispositive. Title companies and purchasers may rely upon a Non-Foreign Affidavit to fall outside of FIRPTA.

Exemptions under FIRPTA include conveyances where the sales price is under \$300,000 *and* the purchaser uses the property as his or her own residence. The purchaser must be a natural person; hence the exemption does not apply to business entities. Furthermore, the real property cannot be vacant land. To qualify for the exemption, the purchaser must carry the burden of proof.

If the seller is a foreign person, then to avoid or reduce the FIRPTA tax, the seller must obtain a withholding certificate from the IRS prior to the closing. In order to obtain such a withholding certificate, the seller must file FIRPTA forms 8288-B with the IRS. If the seller has a withholding certificate then the purchaser should remit the tax amount as determined by the IRS with Form 8288 or 8288-A within 20 days after the closing. If the seller has filed for a withholding certificate but IRS determination has not arrived in time for closing, the purchaser should retain 10% tax pending receipt of the withholding certificate or IRS approval or denial. Upon receipt or IRS approval or denial, purchaser should forward the amount claimed by the IRS along with Form 8288 or 8288-A within purchaser should remit the 10% tax to the IRS within 20 days of the closing along with Forms 8288 or 8288-A.

## INCREASE IN FEES FOR TRANSFER REPORT FORM RP-5217 & RP-5217 NYC

Budget Bill S6057 B providing in part for increases in the filing fee for the State Board of Real Property Services Real Property Transfer Report has been passed by the legislature and signed by the Governor as Chapter 57 of the Laws 2004. The increased fees are required for all deeds submitted for recording on or after September 1, 2004.

When the property being transferred is a "Qualifying residential property" or a "Qualifying farm property" the filing fee has been increased from \$50 to \$75. The filing fee for the transfer of any other type of property will increase from \$50 to \$165.

"Qualifying residential property" is defined as property that satisfies at least one of the following criteria:

1. The property classification code assigned to the property on the latest final assessment roll, as reported on the transfer report form, indicates that the property is a 1, 2 or 3 family home or a rural residence; or
2. The transfer report form indicates that the property is a 1, 2 or 3 family residential property that has been newly constructed on vacant land; or
3. The transfer report form indicates that the property is a residential condominium.

"Qualifying farm property" is defined as property for which the property classification code on the latest final assessment roll, as reported on the transfer report form, is in the agricultural category.

## INCREASE IN MORTGAGE RECORDING TAX – LEWIS COUNTY

Effective for mortgages recorded on or after November 1, 2004, regardless of the date of closing, Lewis County will impose a county mortgage recording tax at the rate of \$.25 for each \$100 and each remaining major fraction thereof of principal debt secured by the mortgage. The county mortgage tax in Lewis County is effective only for a three year period. Thus for mortgages recorded on or after November 1, 2007, the mortgage recording tax rate for Lewis County will revert back

to \$.75 per \$100 of secured principal debt. The new mortgage recording tax is not the “additional” mortgage recording tax provided for in Tax Law section 253, subdivision 2(a), and thus the “\$25 exemption” does NOT apply.

## NEW YORK CITY REAL ESTATE TAX UPDATE

A tax surcharge of 25% will be imposed on Class One real property owned by “absentee” landlords. Local law 6 of 2004 changes the fiscal year in which the tax surcharge will first take effect to the year beginning July 1, 2006. The surcharge was first effective for the fiscal year beginning July 1, 2003; it has not been billed by the Department of Finance.

### COMMON REASONS FOR REJECTION BY THE CITY REGISTER

- Missing BBL
- Incorrect BBL with premises
- First and/or second parties address missing
- Address and/or legal description or property location missing
- Unit number missing for condos
- Acknowledgment defective – old form used
- Acknowledgement defective – missing information
- Endorsement page missing
- Simultaneous or recording language missing
- Property (improvement) clause missing on mortgage
- Name in caption does not agree with signature
- Affidavits do not agree with document
- Affidavits missing or incomplete information
- HPD Affidavit missing
- HPD Affidavit incorrect
- Smoke detector Affidavit missing
- Smoke detector Affidavit incorrect
- RPL Section 275 clause missing on Assignment
- Illegible document
- Chain broken on SATS
- Unsigned checks
- Illegible checks
- Check not made out to “NYC Dept. of Finance”
- Incorrect recording fees
- Incorrect mortgage tax
- Incorrect amount on check/insufficient funds for documents
- Consideration for RPT and TP 584 does not match
- Information on RPT missing
- Information on RPT incorrect
- Information on TP 584 missing
- Information on TP 584 incorrect
- Missing defendant's address on referee's deed

### PROFESSIONAL ETHICS

**Question:** A lawyer is the sole shareholder of a licensed New York mortgage brokerage corporation and a separate abstract company. Where the attorney informs the client of the attorney’s other business relationship and discloses the same to the client in a Statement of Client’s Rights in Cooperative Business Arrangements, and where the client gives informed written consent, may the attorney and/or the attorney’s companies:

1. Represent, the selling client in a real estate transaction and (a) broker the mortgage for the buyer, (b) act as the lender’s attorney at closing, and (c) act as the abstract company for the transaction?
2. Represent the buying client in a real estate transaction and (a) broker the mortgage for the buyer, (b) act as the lender’s attorney at closing, and (c) act as the abstract company for the transaction?

**Answer:** A lawyer who owns a title abstract company and a mortgage brokerage is barred from acting as a lawyer in a transaction in which one or both of these companies is also acting in a variety of situations in which the lawyer’s personal interest in a fee (or dividend) from the ancillary business compromises the independence of the lawyer’s legal advice. \*

#### Can a Lawyer Act in Dual Role with Informed Consent?

	Buyer’s Lawyer	Seller’s Lawyer	Lender’s Lawyer
<b>Mortgage Brokerage</b>	N	N	Y
<b>Title Abstract Company</b> (providing insurance or making insurance recommendation)	N	N	N
<b>Title Abstract Company</b> (performing "ministerial tasks")	Y	Y	Y

\* Opinion of the New York State Bar Association Committee on Professional Ethics.

## **ALERT – COUNTERFEIT CHECKS!**

American Community Bank, Glen Cove, New York, has reported to the Federal Deposit Insurance Corporation (FDIC) that counterfeit cashier's checks bearing the institution's name are in circulation.

The counterfeit checks do not bear the correct routing number of 021413388 for American Community Bank, and the fraudulent instruments are markedly dissimilar to authentic bank checks. The counterfeit checks display the bank name in the upper left hand corner of the check, but without the bank logo. Authentic cashier's checks display the bank name and the bank logo at the top of the check in the center.

Any information that you have concerning this matter should be brought to the attention of:

John K. Holland  
Executive Vice President and Chief Financial Officer  
American Community Bank  
300 Glen Street  
Glen Cove, New York 11542  
Telephone: (516) 609-2900  
Fax: (516) 609-0900  
[jholland@ACBalways.com](mailto:jholland@ACBalways.com)

Information about these instruments may be forwarded to the FDIC's Special Activities Section, 550 17<sup>th</sup> Street, N.W., Room F-4040, Washington, D.C. 20420, or transmitted electronically to [alert@fdic.gov](mailto:alert@fdic.gov).

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