

Introduction: Law, Regulations & Industry Standards

1

National



2

National

- Federal Law
 - RESPA (Real Estate Settlement Procedures Act)
 - TILA (Truth in Lending Act)
 - IRS
 - Reporting – 1099-S
 - FIRPTA (Foreign Investment in Real Property Tax Act)
- FinCEN
- National Association of Legal Assistants (NALA) Code of Ethics
- ALTA Best Practices



RESPA

- Real Estate Settlement Procedures Act
 - Passed 1974
 - Protects homeowners in real estate transactions
 - Requires disclosures
 - No kickbacks or referral fees
 - Regulation X

TILA

- Truth in Lending Act
 - Passed in 1968
 - Required disclosures of loan costs
 - Gives consumers rights
 - Covers more than real estate
 - Regulation Z
- CFPB – Bureau of Consumer Financial Protection
 - Ensures lenders treat consumers fairly



5

5

1099-S



- 1099-S Reporting is required concerning:
 - Proceeds from real estate transactions
 - Generally filed by the person responsible for closing the transaction
 - 1099-S requirements
 - Sale or exchange for money
 - Present or future ownership interest
 - Improved or unimproved land, permanent structures, condominium unit, or cooperative housing
 - Deadline for filing
 - February 28th if filing manually, March 31st if filing electronically



6

6

1099-S Exceptions (6)



- 1) Sale of principal residence for
 - <\$250,000.00 single or
 - < \$500,000.00 jointly
 - & Non-recognition applies
- 2) Transferor is a corporation or governmental unit
- 3) Full or partial satisfaction of a debt secured by property
- 4) De Minimus Transfer <\$600.00
- 5) Gifts or inheritance
- 6) Volume seller of real estate as stock in trade



7

7

1099-S



- On-demand video
 - A Closing Agent's Guide to the 1099-S
- Concept articles:
 - "The Who, What and When of 1099-S Reporting," 41 *Fund Concept* 1 (Jan. 2009)
 - "1099-S Reporting: Practical Tips for Frequently Encountered Situations," 42 *Fund Concept*, 105 (Dec. 2010)
 - "The Catch-22 of Foreign Sellers and the form 1099-S," 49 *Fund Concept* 105 (Sep. 2017)
 - Links will be emailed next week



8

8

Application for Filing Information Returns Electronically

- (FIRE) IRS Form 4419
 - Electronic reporting to IRS is required if reporting 250 or more 1099-S forms per year
 - Must submit Form 4419 to IRS to obtain a Transmittal Control Code (TCC) for reporting



Form 4419 (September 2021)	Department of the Treasury - Internal Revenue Service Revise Existing Transmitter Control Code (TCC) for Filing Information Returns Electronically (FIRE)	OMB Number 1545-0087 IRS Use Only
--------------------------------------	---	--------------------------------------

Purpose of form: Revise legal name (associated with EIN in Block 4), address, person to contact or contact information on an active Transmitter Control Code (TCC) obtained before September 28, 2021. Do not use this form to request a new TCC.

Note: Only submit a paper Form 4419 if you have an active Transmitter Control Code (TCC) received before September 28, 2021 and need to update Block 3, the legal name (associated with EIN in Block 4), mailing address of the organization that will submit electronic files (transmitter and/or issuer) or Block 5, the name, position title, email address and telephone number (with area code) of the person to contact about this application. Allow 45 days for processing.

Request for a New Transmitter Control Code (TCC): Beginning Sept. 28, 2021 all request for a TCC are required to use the new online Information Returns (IR) Application for Transmitter Control Code (TCC), available on the Filing Information Returns Electronically (FIRE) page on irs.gov.

- Purpose for revising current TCC information (required)**
 - ☐ Update legal name (associated with EIN in Block 4)
 - ☐ Update mailing address
 - ☐ Update person to contact about this application
- Current Transmitter Control Code (TCC) (refer to instructions page 2) (required)**

--	--	--	--	--
- Transmitter and/or issuer information (required)**
Complete legal name (associated with EIN in Block 4) (required)

Complete legal name (continued)

Mailing address (required) _____ City (required) _____ State _____ ZIP code (required) _____
- Employer Identification Number (EIN) (SSN not permitted) (required)** _____
- Person to contact about this request (complete all fields)**
Name (required) _____
Position title (required) _____
Email address (required) _____ Telephone number (required) _____
- ☐ I have read the affidavit in the instructions on page 2 and I am authorized to sign the document on behalf of the transmitter and/or issuer (required)
Under penalties of perjury, I declare that I have examined this document including any accompanying statements, and to the best of my knowledge and belief, it is true, correct, and complete
- Official of the company or organization**
Full legal name (required) _____
Position title (required) _____
Signature (required) (a computer-generated signature is not acceptable) _____ Date (required) _____

For Privacy Act and Paperwork Reduction Act Notice, see instruction.

Catalog Number 41639J www.irs.gov Form **4419** (Rev. 9-2021)

9

FIRPTA



- Foreign Investment in Real Property Tax Act, Section 1445 Internal Revenue Code
 - When U.S. real property is sold & seller is a “foreign person” withholding is required by purchaser on amount realized
 - Foreign person includes
 - Nonresident alien individuals
 - Foreign corporation &
 - U.S. limited liability companies with foreign members
 - Amount realized is
 - Generally, the sales price but
 - Could be greater if there is forgiveness of debt on a short sale




10

10

FIRPTA (cont.)



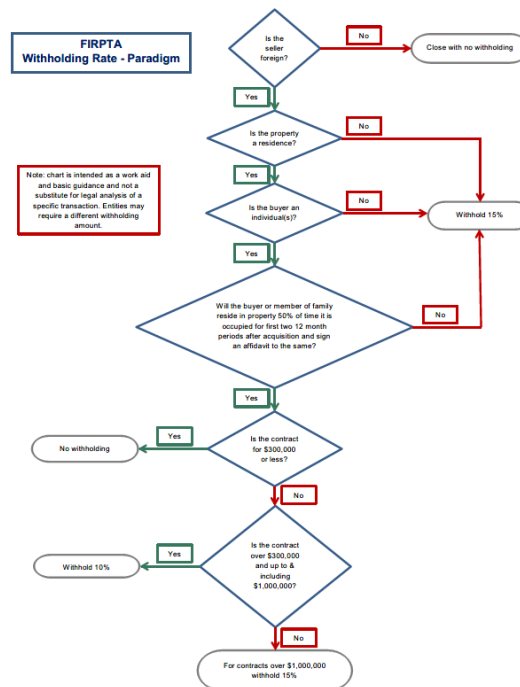
- Generally, the withholding amount is 15% of amount realized
-  **Withholding agent is the buyer** or transferee, but the closing agent facilitates this duty
- Buyer, real estate licensee & closing agent may be liable
- Buyer has an affirmative duty to determine if seller is a foreign person & if so, must withhold from sale proceeds
- Beware short sales & foreclosures – withholding obligation applies to full indebtedness



11

11

Flow Chart for exemption & reduction of withholding



12

©2016 Attorneys' Title Fund Services, LLC. Duplication Prohibited.

12

FinCEN GTO*



- Business entity purchaser
- One or more residential real properties
- Not vacant land
- \$300,000 or more
- Title insurance purchased
- No external financial (bank loan)
- Will require GTO Information Collection Form
- *Geographically Targeted Orders



13

13

FinCEN GTO



- Miami-Dade, Broward & Palm Beach Counties
- See website for current order dates



14

14

NALA

- National Association of Legal Assistants
 - Non-profit organization
 - Voluntary certification program
 - Ethical guideline



15

15

ALTA's Best Practices

Industry Standards

16

What Are ALTA Best Practices?

- Reaction to vetting from lenders due to
 - Dodd-Frank Wall Street Reform Act
 - CFPB Bulletin of April 13, 2012
- A set of policies and procedures for settlement agents
- A way to build confidence with lenders about your internal processes
- Each lender determines if they will require
 - Written Best Practices
 - Self-certification
 - Third party certification
- A written guide for you



17

17

7 Pillars of ALTA's Best Practices

- Pillar 1 – Licensing
- Pillar 2 – Escrow/Trust Accounts
- Pillar 3 – Privacy & Information Security
- Pillar 4 – Recording & Pricing Procedures
- Pillar 5 – Title Policy Procedures
- Pillar 6 – Professional Liability Insurance
- Pillar 7 – Resolving Consumer Complaints



18

18

Policy Review

- All policies and procedures
 - Are works in progress and
 - Should change as your business changes
- Periodic review is necessary
 - At least annually
- Testing procedures is also a good idea



19

19

Resources

- ALTA website
 - Samples
 - Updates
- The Fund's Website
 - Tools &
 - On-Demand webinars
 - Building the Pillars of ALTA's Best Practices Workshop I
 - Pillars 1, 6 & 7
 - Building the Pillars of ALTA's Best Practices Workshop II
 - Pillars 2, 4 & 5
 - Concept articles



20

20

State



State

- Florida Constitution
- Florida Statutes
 - Property Assessed Clean Energy (PACE) financing
- Florida Administrative Code
- The Florida Bar Rules, Regulations, Code of Ethics



Constitution

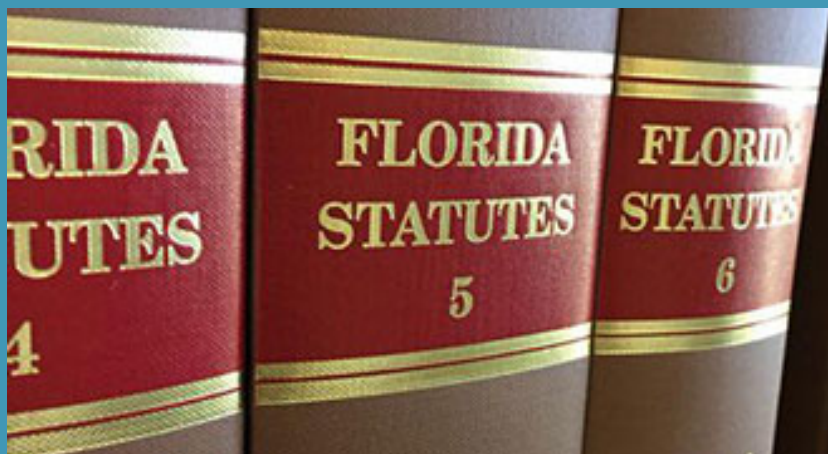
- Homestead
 - Alienation & devise
 - Protection from creditors
 - Tax benefits
- Resources
 - On-Demand webinar
 - There's No Place Like Homestead
 - Homestead 2.0
 - Homestead Tax Cheats: When Chameleons Go Bad



23

23

Florida Statutes



24

24

Deeds – Statute of Frauds

- Sec. 689.01, F.S.
 - How real estate conveyed
 - A conveyance of an interest in land for more than one year
 - Must be in writing &
 - Signed by party to be bound
 - In presence of two subscribing witnesses



Statutory Warranty Deed

- Sec. 689.02, F.S.
 - Form of warranty deed prescribed
 - Florida's statutory warranty deed incorporates full warranties of title by reference...
 - "...party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever..."
- Sec. 689.03, F.S. -
 - Legal effect of statutory warranty deed
 - This statutory form has legal effect of a full warranty deed

Statutory Warranty Deed

- If deed refers to the statute, 6 common law covenants, do not need to be listed,
 - **Present Covenants**
 - **Covenant of Seisin:** "A good right to convey."
 - **Covenant of Right to Convey:** Seller's promise that he has valid title of the property being conveyed
 - **Covenant Against Encumbrances:** Seller promises that there are no encumbrances, other than those that have been previously disclosed
 - **Future Covenants**
 - **Covenant of Warranty:** Warranty of title that grantee & his or her heirs and assigns will enjoy it without interruption by virtue of a paramount title
 - **Covenant of Quiet Enjoyment:** Seller's promise to protect buyer against claims paramount title to the property
 - **Covenant of Further Assurances:** Seller to take affirmative steps to cure any defects in grantor's title



27

27

Requirements for Recording

- Sec. 695.26, F.S.
 - Requirements for recording...
 - Name of parties who execute & notary public
 - Legibly printed
 - Typewritten or
 - Stamped
 - Name and P.O. Box of natural person who prepared instrument
 - Reserved for use by clerk
 - 3 inch by 3 inch space on top right corner of first page
 - 3 inch by 1 inch space at top right corner of subsequent pages



28

28

Why We Record ...

- Sec. 695.01, F.S. Conveyances to be recorded (Florida is a Notice state)
 - Protects interests of
 - Bona fide purchasers for value &
 - Creditors without notice against unrecorded interests
- Sec. 695.11, F.S. Instruments deemed to be recorded from time of filing
 - Priority of recorded instruments is generally established by order of recording
 - Exceptions to this priority rule include:
 - Purchase money mortgage
 - Construction liens relating back to NOC
 - Real property taxes & liens that are similarly enforceable



29

29

Notaries Beware!



- Sec. 117.107 (10)-(12), F.S.
 - (10) may not notarize a signature on a document if document is incomplete or blank
 - (11) may not notarize a signature on a document if person whose signature is to be notarized is spouse, son, daughter, mother, or father of the notary public
 - (12) may not notarize a signature on a document if notary public has a financial interest in or is a party to underlying transaction



30

30

Property Assessed Clean Energy (PACE) Financing



- Sec. 163.08 F.S.
- Provides financing for energy & wind hardening improvements
- Summary Memorandum of Agreement is recorded
 - Sometime updated with Addendum to Financing Agreement
 -  Does not contain the borrower's signature
- Payment of loan is by Non-Ad Valorem tax (annually with no discount)
-  New loan will require payoff
 - FHA
 - Fannie Mae
 - Freddy Mac



31

31

PACE Financing

- May be 18-month delay in first payment
-  May not show on tax statement for 18 months
- May not show on the TRIM notice
- Payoff statement may be inaccurate
 -  May not contain next annual payment
- Resources
 - Concept articles
 - On-demand webinar "*The Good, The Bad & The Ugly of PACE Financing*"



32

32

Marketable Record Title Act (MRTA)


- Chap. 712, F. S. became effective July 1, 1965
- MRTA intended to simplify examination of title by extinguishing stale claims
 - Claims are so old (more than 30 years) should be extinguished by operation of law
- TN 10.01.02 for details
- May eliminate a B-II exception



33

33

MRTA

- Exceptions to MRTA (interests that cannot be eliminated) include:
 - Matters disclosed or inherent in root of title
 - Matters preserved by filing a proper notice
 - Rights of parties in possession
 - Matters arising after recordation of root of title
 - Easements in use
 - Rights of parties assessed taxes for past three years
 - Most governmental interests
 - Mineral rights in fee,
 -  But not leasehold interest and rights to entry to use mineral rights



34

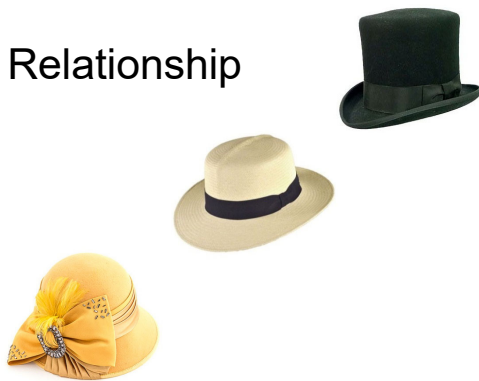
34

Your Role in Transaction

35

Attorney's Role in a Transaction


- Attorney/Client Relationship
- Escrow Agent
- Closing Agent



36

Attorney Client Relationship



- Attorney client relationship hinges on client's belief
- Attorney has an ethical obligation to unrepresented parties to explain that attorney is representing an adverse interest
- Attorney has a duty to disclose matters outside scope of representation if aware of those matters
-  Attorneys should utilize engagement letters or non-representation letters to document scope of representation



37

37

Escrow Agent

- Designated in FR/Bar contract
- Exercise reasonable skill & ordinary diligence in holding & delivering possession of the escrowed property; &
 - Supervise closing in a reasonably prudent manner
- Pay escrowed property to closing or settlement agent timely
 - Usually money
 - Needs to be collected fund:



38

38

Closing Agent Duties

- Work in best interest of all parties including lender
- Know the contract
 - Transaction begins & ends with contract
 - Follow provisions in contract
 - Follow timelines in contract
- Review title
 - Clear title items – B-I (to do list)
 - Clear possible B-II items to provide more coverage
- Follow lender's instructions



Disbursements to Brokers

- Chapter 475, F. S. governs licensed real estate brokers
 - Licensed salespeople work for brokers &
 - Must be paid through brokers
- “Closing Disbursement of Brokerage Commissions”, 44 *Fund Concept* 47 (June 2012)



Disbursements to Brokers

- Which broker(s) do I pay at closing?
 - Listing broker
 - Selling broker or
 - Both
- Who pays the brokers commission?
 - Seller
 - Buyer or
 - Both
- How do I know?
 - Review the sales contract, introduce yourself as closing agent & confirm commission amount & payment
- Can I ever pay a salesperson directly?



41

41

Closing Agent Responsibilities

- Paraprofessionals support Fund Member in:
 - Appropriate representation of parties
 - Evaluating title
 - Assuring accurate closing documents
 - Assisting in & preparing to exchange funds – settling the transaction
 - Recording documents
 - Following lender's directives
 - Issuing title policy(ies)
 - Complying with regulations



42

42