



## **ALTERNATE PROCEDURE PROVIDED FOR NONFOREIGN AFFIDAVITS UNDER FIRPTA RULES**



**By:**

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**About the Author:**

Ms. Glendinning joined the firm in 1987 and has headed the International Tax Department since 1996. She has authored articles regarding various international tax issues and frequently gives presentations on U.S. income and estate taxation of foreign nationals doing business in the U.S.

Under the Foreign Investment in Real Property Tax Act (FIRPTA), a foreign “person” (defined as a foreign individual, corporation, partnership, estate or trust) is subject to a withholding of 10% of the amount realized on the disposition of a U.S. Real Property Interest (USRPI). It is the responsibility of the transferee of the USRPI to deduct and withhold the 10%.

The transferee is not required to withhold if the transferor furnishes the transferee with an affidavit stating, under penalties of perjury, the transferor’s U.S. taxpayer identification number and that the transferor is not a foreign person.

Under the Housing and Economic Recovery Act of 2008, Code Section 1445(b)(9) has been added and applies to dispositions of USRPI’s after July 30, 2008. This section provides an alternative procedure for furnishing the nonforeign affidavit. Instead of furnishing a nonforeign affidavit to the transferee, a transferor may furnish the affidavit to a “qualified substitute.” The qualified substitute is then required to furnish a statement to the transferee stating, under penalties of perjury, that the qualified substitute has the affidavit in his possession. A qualified substitute is the person, including any attorney or title company, responsible for closing the transaction (other than the transferor’s agent), and the transferee’s agent.

The qualified substitute and the transferee will be required to retain documentation for five years.

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