



# Buyer & Seller Guide

Committed to Your **Successful** Closing.



**Fidelity National Title**<sup>®</sup>

Trusted everywhere,  
every day.

**PREPARED FOR THE STATE OF HAWAII**



## About This Guide

At Fidelity National Title, we are committed to your successful transaction and to guiding you through the entire process. Your team at Fidelity National Title is proud to provide this resource to understanding title insurance and the escrow process. We are committed to offering you the guidance and support you need every step of the way.

With over 160 years in the title industry, Fidelity National Title through our family of companies offers you the financial strength, experience and expertise needed to close your transactions with confidence and complete peace of mind.

This guide has been prepared to give you an overview of the process involved during the purchase or sale of a property and also to explain the various roles that we will play in helping you as you move toward the close your transaction.

We hope you find this information helpful in the process of a smooth and successful transaction. Please feel free to contact us at any time with your questions or need for additional information.



## Your Transaction Details:

Subject Property Address:

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Escrow Number: \_\_\_\_\_

Loan Number: \_\_\_\_\_

Estimated Closing Date: \_\_\_\_\_

Inspection Date: \_\_\_\_\_

Inspection Date: \_\_\_\_\_



**IMPORTANT REMINDER: ALWAYS CALL BEFORE YOU WIRE.**

Wire fraud is on the rise. Fidelity National Title urges our clients to ALWAYS CALL BEFORE YOU WIRE and never rely upon e-mail communication. Always follow these two simple steps:

**STEP 1:** Obtain the phone number of your real estate broker, REALTOR® and your Fidelity National Title escrow officer as soon as an escrow is opened.

**STEP 2:** Call the phone number you wrote down from STEP 1 above to speak directly with your Fidelity National Title escrow officer to confirm wire instructions PRIOR to wiring. If you receive alternative wiring instructions appearing to be from Fidelity National Title, be suspicious as we rarely change our wiring instructions.

Wire instructions will never be requested or accepted via email.

WIRE INSTRUCTIONS: \_\_\_\_\_

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OTHER NOTES: \_\_\_\_\_

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## Important Contacts

### Real Estate Agent

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

### Lender

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

### Home Inspection

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

### Title & Escrow

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

### Homeowner's Association

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

### Insurance Company

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_



# All About Title Insurance

## And Frequently Asked Questions



### What is Title Insurance?

The purchase of a home is the largest investment most people will make in a lifetime; therefore, the importance of fully protecting such an investment cannot be overstressed. Title insurance is protection which assures that the rights and interests to the property are as expected, that the transfer of ownership is smoothly completed and that the new owner receives protection from future claims against the property. It is the most effective, most accepted and least expensive way to protect property ownership rights.

Because land endures over generations, many people may develop rights and claims to a particular property. The current owner's rights—which often involve family and heirs—may be obscure. There may be other parties (such

as government agencies, public utilities, lenders or private contractors) who also have "rights" to the property. These interests limit the "title" of any buyer.

### Why Do You Need a Title Insurance Policy?

If title insurance companies work to eliminate risks and prevent losses caused by defects in the title before the closing, why do you need a title insurance policy? The title to the property could be seriously threatened or lost completely by hazards which are considered hidden risks—"those matters, rights or claims that are not shown by the public records and, therefore, are not discoverable by a search and examination of the those public records." Matters such as forgery, incompetency or incapacity of the parties, fraudulent impersonation, and unknown errors in the records are examples of "hidden risks" which could provide a basis for a claim after the property has been purchased.

Title insurance isn't just for a homeowner. Subdividers need it when planning a new tract of homes or a commercial strip center. Attorneys use it for clients who are investing in shopping centers, hotels, office buildings and countless other projects. Builders need it in order to obtain construction loans from their lender. Everyone wants to have peace of mind when investing their hard-earned money. The title insurance company will help protect these important investments, no matter how large or small, with its own reputation and financial strength.

### Why Does the Lender Need a Policy on My Property?

For the lender, a title policy is a guarantee that it has a valid and enforceable lien (loan or deed of trust) secured by the property, that no one else other than those listed on the policy has a prior claim (or loan, etc.) and that the party to whom they are making the loan does own the property being used as security for the loan. This protection remains in effect as long as the loan remains unpaid.

The existence of a lender's title policy encourages lenders such as banks, savings and loan associations, commercial banks, life insurance companies, etc., to loan money. Because they are lending other people's money (savings or policy holder's funds), they must be concerned with safety should the borrower not make their payments. The title company

*Continued, next page.*



# Fidelity National Title®

Trusted everywhere,  
every day.

## Title Insurance Frequently Asked Questions, *continued.*

insures that the title to the property is marketable in the event of foreclosure and the guarantee is backed by the integrity and solvency of the title company. Of course, this benefits everyone - from the single family homeowner to the owner of a high-rise building.

### What is a Title Search?

Before issuing a policy of title insurance, the title company must review the numerous public records concerning the property being sold or financed. The purpose of this title search is to identify and attempt to clear potential problems before the new owner takes title or the lender loans money.

Our research helps us to determine if there are any rights or claims that may have an impact upon the title such as unpaid taxes, unsatisfied mortgages, judgments, tax liens against the current or past owners, easements, restrictions and court actions. These recorded defects, liens, and encumbrances are reported in a "preliminary report" to applicable parties. Once reported, these matters can be accepted, resolved or extinguished prior to the closing of the transaction. In addition, you are protected against any recorded defects, liens or encumbrances upon the title that are unreported to you and which are within the coverage of the particular policy issued in the transaction.

### What Types of Policies Are There?

Protection against flaws and other claims is provided by the title insurance policy which is issued after your transaction is complete. Two types of policies are routinely issued at this time: An "owner's policy" which covers the home buyer for the full amount paid for the property; and a "lender's policy" which covers the lending institution over the life of the loan. When purchased at the same time, a substantial discount is given in the combined cost of the two policies. Unlike other forms of insurance, the title insurance policy requires only one moderate premium for a policy to protect you or your heirs for as long as you own the property. There are no renewal premiums or expiration date.

### How is Title Insurance Different Than Other Types of Insurance?

With other types of casualty insurance such as auto, home, health, and life, a person thinks of insurance in terms of future loss due to the occurrence of some future event. For instance, a party obtains automobile insurance in order to pay for future loss occasioned by a future "fender bender" or theft of the car. Title insurance is a unique form of insurance which provides coverage for future claims or losses due to title defects which are created by some past event (i.e. events prior to the acquisition of the property).

Another difference is that most other types of insurance charge ongoing fees (premiums) for continued coverage. With title insurance, the original premium is the only cost as long as the owner or heirs own the property. There are no annual payments to keep the Owner's Title Insurance Policy in force. While some people balk at another "closing fee", title insurance is reasonable considering the factor that the policy could last a lifetime.

### How Does a Title Insurance Policy Protect Against Claims?

If a claim is made against the owner or lender, the title insurance company protects the insured by:

1. Defending the title, in court if necessary, at no cost to owner/lender, and
2. Bearing the cost of settling the case, if it proves valid, in order to protect your title and maintain possession of the property.

Each policy is a contract of "indemnity." It agrees to assume the responsibility for legal defense of title for any defect covered under the policy's terms and to reimburse for actual financial losses up to the policy limits.



## 21 Reasons for Title Insurance

### Buying Property is a Numbers Business

- 1.** A fire destroys only the house and improvements. The ground is left. A defective title may take away not only the house, but also the land on which it stands. Title insurance protects you (as specified in the policy) against such loss.
- 2.** A deed or mortgage in the chain of title may be a forgery.
- 3.** A deed or mortgage may have been signed by a person under age.
- 4.** A deed or mortgage may have been made by a person considered incompetent.
- 5.** A deed or a mortgage may have been made under a power of attorney after its termination and would, therefore, be void.
- 6.** A deed or a mortgage may have been made by a person other than the owner, but with the same name as the owner.
- 7.** The testator of a will might have had a child born after the execution of the will, a fact that would entitle the child to claim his or her share of the property.
- 8.** A deed or mortgage may have been procured by fraud or duress.
- 9.** Title transferred by an heir may be subject to a federal estate tax lien.
- 10.** An heir or other person presumed dead may appear and recover the property of an interest therein.
- 11.** A judgment or levy upon which the title is dependent may be void or voidable on account of some defect in the proceeding.
- 12.** Title insurance covers attorneys' fees and courts costs.
- 13.** Title insurance helps speed negotiations when you're ready to sell or obtain a loan.
- 14.** By insuring the title, you can eliminate delays and technicalities when passing your title on to someone else.
- 15.** Title insurance reimburses you for the amount of your covered losses.
- 16.** A deed or mortgage may be voidable because it was signed while the grantor was in bankruptcy.
- 17.** Each title insurance policy we write is paid up, in full, by the property.
- 18.** There may be a defect in the recording of a document upon which your title is dependent.
- 19.** Claims constantly arise due to marital status and validity of divorces. Only title insurance protects against claims made by nonexistent or divorced "wives" or "husbands."
- 20.** Many lawyers, in giving an opinion on a title, protect their clients as well as themselves, by procuring title insurance.
- 21.** Over the last 24 years, claims have risen dramatically.

#### **We hope you never have a title claim**

Americans have the future in mind when they buy a house, and they purchase homeowner's insurance to help protect that future. But with homeownership comes the need to protect the property against the past, as well as the future. Title insurance protects a policy holder against challenges to rightful ownership of real property and challenges that arise from circumstances of past ownership. Each successive owner brings the possibility of title challenges to the property.

When you purchase real property, rely on Fidelity National Title to protect your interests. You'll be insured by a company backed by a long history of successful title operations.

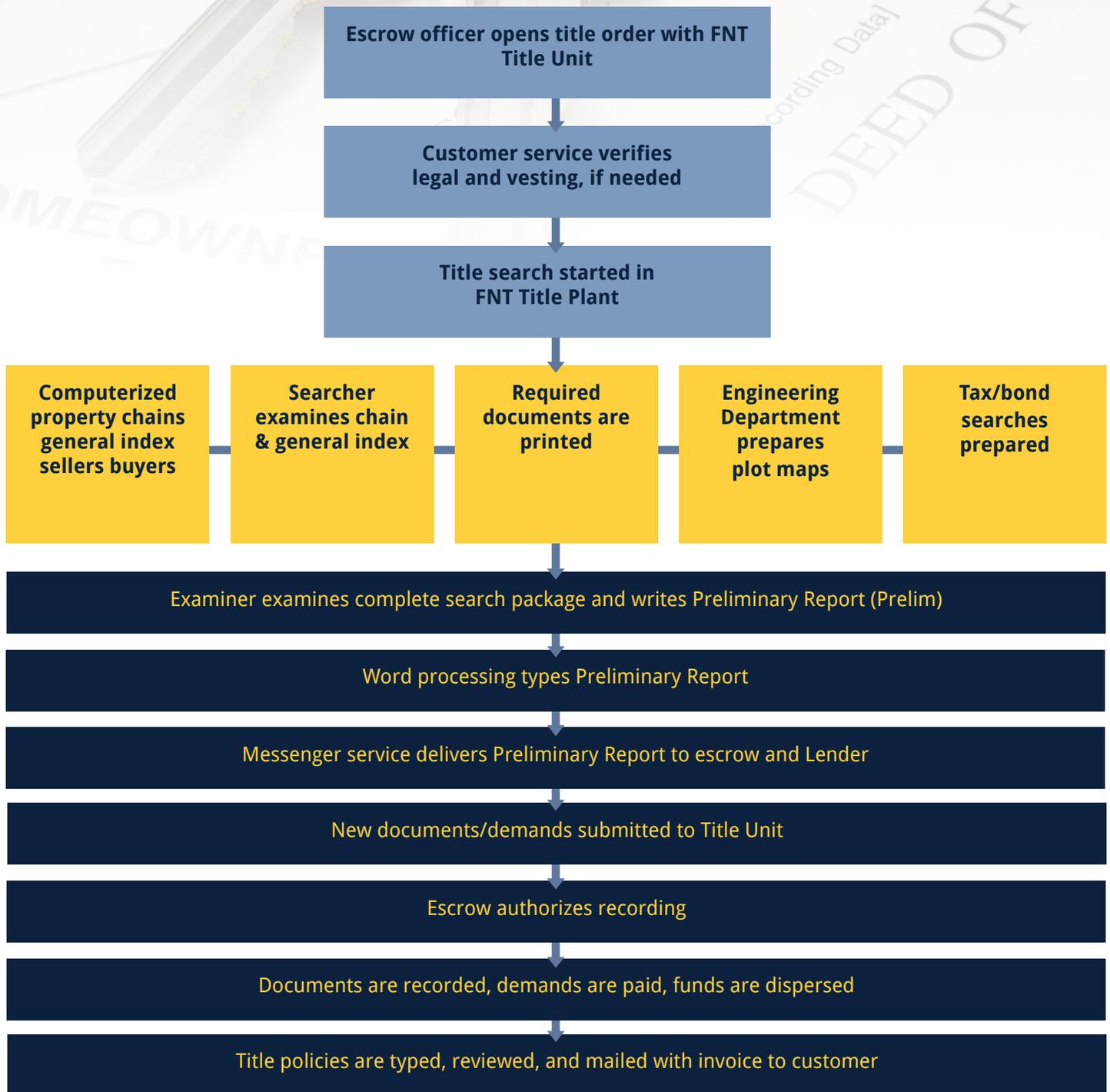
#### **Rely on Fidelity National Title to Protect Your Investment**

Every owner, purchaser, and beneficiary, whether by a deed or contract, should have an insured title. The entire investment depends upon the quality of title. If you are buying real estate, you are paying for a good title and you should see that you have one. If either fire insurance or title insurance is omitted, your security is not complete.

This information is presented for your reference only and is deemed reliable but is not guaranteed.



## Life of a Title Search





## ALTA Homeowner's Policy Comparison

STANDARD POLICY  
COMPLETE HOMEOWNERS POLICY

1. Someone else own an interest in your title to the property
2. A document is not properly signed
3. Forgery and fraud
4. Defective recording of any document
5. Restrictive covenants
6. There is a lien on your title because there is
  - a) A deed of trust
  - b) A judgment, tax or special assessment
  - c) A charge by the Homeowner's Association
7. Title is unmarketable
8. Lack of right of access to and from the land
9. Mechanic's lien protection
10. Forced removal of structure because it:
  - a) Extends onto other land or onto an easement
  - b) Violates a restriction in Schedule B
  - c) Violates an existing zoning law
11. Cannot use land for SFD due to zoning or restrictions
12. Unrecorded lien by the Homeowners' Association
13. Unrecorded easements
14. Others have rights arising out of leases, contracts for options
15. Pays rent for substitute residence
16. Duress, Incapacity and Impersonation
17. \*Building permit violations - forced removal
18. \*Subdivision Map Act violations
19. \*Zoning violations - forced encroachment
20. \*Boundary wall or fence encroachment
21. Restrictive covenant violations
22. Post-policy defect in title
23. Post-policy contract or lease rights
24. Post-policy forgery
25. Post-policy easement
26. Post-policy limitation on use of land
27. Post-policy damage from minerals or water extraction
28. Post-policy living trust coverage
29. Post-policy encroachment by neighbor other than wall or fence
30. Enhanced access- vehicular and pedestrian
31. Damage to structure use of easement
32. Post-policy automatic increases of 10% annually up to 150%
33. Post-policy correction of existing violation of covenant
34. Post-policy limitation of use
35. Post-policy prescriptive easement
36. Street address is incorrect
37. Map not consistent with legal description
38. Coverage for spouse acquiring through divorce
39. Violations of building setbacks
40. Discriminatory covenants
41. Insurance coverage forever

Fidelity National Title automatically issues the highest coverage available.

Coverage is for 1-4 family residences.

This chart is intended for comparison purposes only and is not a full explanation of policy coverage. Policy coverages are subject to the terms, exclusions, exceptions and deductibles show in the policy.

Subject to deductible and maximum liability, which is less than the policy amount. Revised and approved 02/14.



## The Preliminary Report



The **Preliminary Report** is an offer to issue a policy of title insurance covering a particular estate or interest in land subject to stated exceptions.

Since these exceptions may point to potential problems with your intended purchase, it is important for all parties to review the report once it is received.

A Preliminary Report provides a list of the matters which will be shown as exceptions to coverage in a designated policy or policies of title insurance, if issued currently, covering a particular estate or interest in land. It is designed to provide an interim, or “preliminary” response to an application for title insurance and is intended to facilitate the issuance of the designated policy or policies. It is normally prepared after application (order) for such policy(ies) of title insurance on behalf of the principals to a real property transaction, for the purpose of facilitating requirements relative to closing and policy issuance in form and content approved by those parties.

If a title policy is not contemplated, a Preliminary Report should not be ordered. Instead, consideration should be given to requesting a **Condition of Title Report** or other similar title product.

The Preliminary Report states that it is made solely to facilitate the subsequent issuance of a title insurance policy and that the insurer assumes no liability for errors in the report. Accordingly, any claim arising from a defect in title must be made under the title policy and not the Preliminary Report.

After a title order has been placed, matters relative to the title policy coverage on the subject property are assembled in a title search package and examined by skilled technicians. This is when the Preliminary Report is prepared and sent to the client. The report contains relevant information so that the parties to the transaction will become aware of matters which will not be insured against by the title company. This report is issued before the title policy, hence the name Preliminary Report.

### The matters shown in the report are as follows:

- The estate of interest covered
- The owner of the estate or interest
- The parcel of land involved
- The exceptions, liens, encumbrances and other risks which will not be insured against if a title policy is issued.
- Other requirements and provisions which are reflected as “Notes” in the Preliminary Report which are removed if and when a title policy is issued.



## Statement of Information

What is it & why would you need to fill one out?



**Do you have questions? We are here to help.**

As part of the process to sell, purchase or refinance a property, you may be requested to complete a **Statement of Information** to assist your team at Fidelity National Title in the process of researching and clearing the title to the property. A Statement of Information requests information about you and, if applicable, your spouse or partner such as past addresses, employment and other identifying information to assist us in that process.

Sometimes, if it cannot be clearly determined from information contained on the lien document whether a matching name is only a similar name and not actually you, we may ask for additional information to help us clarify.

Since there are so many similar names, a Statement of Information is very helpful and will speed up the title clearing process and improve the accuracy of the results that must be considered before the Title Policy is issued. The information provided can, in some cases, even help us detect fraud or forgery affecting the property. Therefore, it is important to completely fill out the form and have you (and your spouse or partner, if applicable) sign it.

Fidelity National Title complies with the **Privacy Act** and will safeguard your personal information and only use it to assist in clearing your title. We do not contact any Credit Reporting Agencies as part of the process nor do we provide or sell the information you give us to any outside companies or agencies.



## Title & Tenancy in the State of Hawaii

### TENANCY IN SEVERALTY

**Example: Property owned by John Doe**

One person owns property as sole ownership in severalty. Only he/she alone can use, mortgage, or dispose of the property. Upon John's death, his interest passes to his heirs or devisees through probate proceedings. Corporations hold title to property in severalty.

### JOINT TENANCY

**Example: Property owned by Jessica Lee (1/3), Thomas Smith (1/3), and Angela Hart (1/3)**

This tenancy may exist between two or more persons. Each has an equal undivided interest in the property with rights of survivorship. A joint tenant may not will his/her interest and upon the death of a joint tenant, his/her interest passes to the other joint tenants. However, a joint tenant may sell his/her interest or partition the property, thereby converting his/her interest to an interest held as a tenant in common. If a tenancy in common is created, this does not disturb the other owners, who still hold their interests as joint tenants amongst themselves. Property under this tenancy may be attached by a lien for debts or obligations. Upon divorce/annulment/termination, a joint tenancy remains intact as to property held by a husband and wife, or as partners in a civil union, as joint tenants.

### HOMEOWNER'S EXEMPTION

Go to <https://www.realpropertyhonolulu.com/exemptions/exemption-information/> to find out who may qualify for a homeowner's exemption on their property taxes. The deadline for filing an exemption claim is September 30.

### TENANCY BY THE ENTIRETY

**Example: Property owned by Tim & Kathy Corpuz, husband and wife; or by John Smith & John Smith, Jr., as reciprocal beneficiaries; or by Jennifer Kim & Jane Doe, as partners in a civil union**

This tenancy may exist only between husband and wife, reciprocal beneficiaries, or partners in a civil union. One tenant by the entirety may not terminate the tenancy by a separate transfer of his/her interest in the property (though he/she may convey his/her interest to the other tenant) nor may he/she partition the property without the consent of the other tenant. The death of one tenant vests title solely in the other and, therefore, it is impossible to pass title by will. Property held under a tenancy by the entirety may not be attached as to the debts and obligations of only one tenant. Federal Tax Liens and Child Support Liens against Tim, but not Kathy, DO attach to the property. Upon divorce/annulment/termination, a tenancy by the entirety becomes a tenancy in common.

### TENANCY IN COMMON

**Example: Property owned by Aaron Daine (2/3 interest) & Anthony Temm (1/3 interest)**

This tenancy may exist among two or more persons, with no right of survivorship. Each person has an undivided interest in the property which he/she is free to convey or pass on to his/her heirs or assigns, without the consent of the other owners. Tenants in common need not hold equal undivided interests (For Example: one tenant may hold a 2/3 undivided interest and the other may hold a 1/3 undivided interest). Property under this tenancy may be attached by a lien for debts or obligations.

This information is presented for informational purposes only and is deemed reliable but is not guaranteed.



## Tenancies Available in Hawaii

	TENANCY IN SEVERALTY	TENANCY IN COMMON	JOINT TENANCY	TENANCY BY THE ENTIRETY
<b>PARTIES</b>	One Person	Two or More Persons	Two or More Individuals	Individuals married to each other, Reciprocal Beneficiaries registered under HRS Chapter 572C <sup>2</sup> , and effective Jan 1, 2012, Civil Unions.
<b>DIVISION OF OWNERSHIP</b>	N/A	Ownership can be divided into any number of interests, equal or unequal. Hawaii Law presumes that interests are equal if not specified.	Equal and Indivisible	Equal and Indivisible
<b>CREATION</b>	Single conveyance to Tenant	One or more conveyances to Tenants, at the same or different times	Single conveyance to Tenants creating equal and identical interests at the same time. Vesting must specify joint tenancy or law presumes a tenancy in common.	Single conveyance to Tenants that must indicate consent, which can be indicated on deed.
<b>POSSESSION &amp; CONTROL</b>	Sole	Each tenant has undivided possession of the entire property according to his share and subject to rights of Co-Tenant(s).	Joint	Joint and Indivisible
<b>CO-TENANTS CONSENTS REQUIRED FOR TRANSFER</b>	N/A	Each Co-Tenant may transfer or mortgage his respective interest separately without consent of other Tenants.	Lender or underwriter may require. The conveyance by one Tenant severs the joint tenancy and creates tenancy in common.	Yes
<b>LIENS AGAINST ONE OWNER</b>	Liens against sole owner generally attach to the property	Co-Tenant's interest generally not subject to liens of other Tenants but a forced sale can occur	Co-Tenant's interest generally not subject to liens of other Tenants but forced sale can occur if lien attaches prior to the debtor's death	Subject to forced sale to satisfy joint debt, but cannot attach property to satisfy one spouse's debt

This information is presented for informational purposes only and is deemed reliable but is not guaranteed. It is not our intention to provide any legal financial or business advice. For specific information, please consult a qualified advisor.



## Leasehold vs. Fee Simple

### LEASEHOLD PROPERTY DESCRIPTION

*An estate or interest in real property held under a rental agreement by which the owner gives another the right to occupy or use land for a period of time.*

- The Lease is both a contract and conveyance whereby the owner, aka Lessor, conveys or lets the land to the Lessee for a specified period of time in consideration for a return of rent or other periodic compensation.
- Both the interest of the Lessor and Lessee may be transferred and conveyed.
- Lessee purchases improvements or structures to property but not the land.
- Lessee is not the owner of land beneath improvement, but is purchasing the right to occupy and use the land and must pay rent on it.
- When the lease term expires, lessee returns land to owner.

### FEE SIMPLE PROPERTY DESCRIPTION:

*A fee simple interest is the most absolute interest one can have in the land, limited only by zoning laws, deed or subdivision restrictions or covenants.*

- The duration of ownership of property is indefinite and is freely transferable and inheritable.



## Escrow FAQs

### What is an Escrow?

Buyers and sellers of a piece of property establish terms and conditions for the transfer of ownership of the property. These terms and conditions are given to a third party known as the escrow holder. In turn, the escrow holder has the responsibility of seeing that terms of the escrow are carried out. The escrow is an independent neutral account and the vehicle by which the mutual instructions of all parties to the transaction are complied with.

### Why is Escrow Needed?

Whether you are the buyer or the seller, you want assurance that no funds or property will change hands until all instructions have been followed. With the increasing complexity of transactions, it takes a trained professional to help navigate a successful closing.

### How Long is an Escrow?

The length of an escrow is determined by the terms of the purchase agreement/joint escrow instructions and can range from a few days to several months.

### Who Chooses the Escrow?

The selection of the escrow holder is normally done by agreement between the principals. If a real estate agent is involved, they may recommend an escrow holder.

### Why Choose Fidelity National Title?

Fidelity National Title Escrow has experienced and knowledgeable Escrow Officers waiting to assist you. We can handle your Residential and Commercial Purchases and/or Refinance Escrows, from the unique to the complex. Fidelity National Title has offices locally and nationwide to accommodate the most demanding Buyers, Sellers and Borrowers. Call us today to close your next transaction.





## About The Escrow Process

### How Does The Escrow Process Work?

The escrow is a depository for all monies, instructions and documents necessary for the purchase of your home, including your funds for down payment and your lender's funds and documents for the new loan. Generally, the buyer deposits a down payment with the escrow holder and the seller deposits the deed and any other necessary documents with the escrow holder. Prior to the close of escrow the buyer deposits the balance of the funds required and agreed upon by the parties with the escrow holder. The buyer instructs the escrow holder to deliver the monies to the seller when the escrow holder:

- ✓ Forwards the deed to the title company for recording
- ✓ Is notified by the title company that a policy of title insurance can be issued showing title to the property is vested in the name of the buyer
- ✓ The escrow holder thus acts for both parties and protects the interests of each within the authority of the escrow instructions. Escrow cannot be completed until the terms and conditions of the instructions have been satisfied and all parties have signed escrow documents. The escrow holder takes instructions based on the terms of the purchase agreement and the lender's requirements

### Escrow Duties

The Escrow Officer's duties typically include the following:

- Receive signed Purchase Agreement;
- Receive and deposit buyer's earnest money into an escrow account
- Serve as the neutral agent and liaison/communication link to all parties to the transaction
- Order Preliminary Report to determine status of title to property
- Request beneficiary's statement or pay-off demand related to existing financing
- Comply with lender's requirements as specified in the lender's closing instructions
- Secure releases of all escrow contingencies or other conditions required
- Prorate taxes, interest, insurance and rents
- Prepare/secure the transfer deed or other documents necessary to consummate the transaction
- Arrange appointments for buyer/seller to sign documents
- Request and receive purchase funds from the buyer and loan funds from new lender
- Close escrow pursuant to instructions provided by seller, buyer, and lender.
- Arrange for recording of deeds and any other documents as instructed
- Request issuance of the title insurance policies
- Disburse funds as authorized, including charges for title insurance, recording fees, commissions and loan payoffs
- Disposition of all funds held in escrow account
- Prepare final accounting statements for the parties

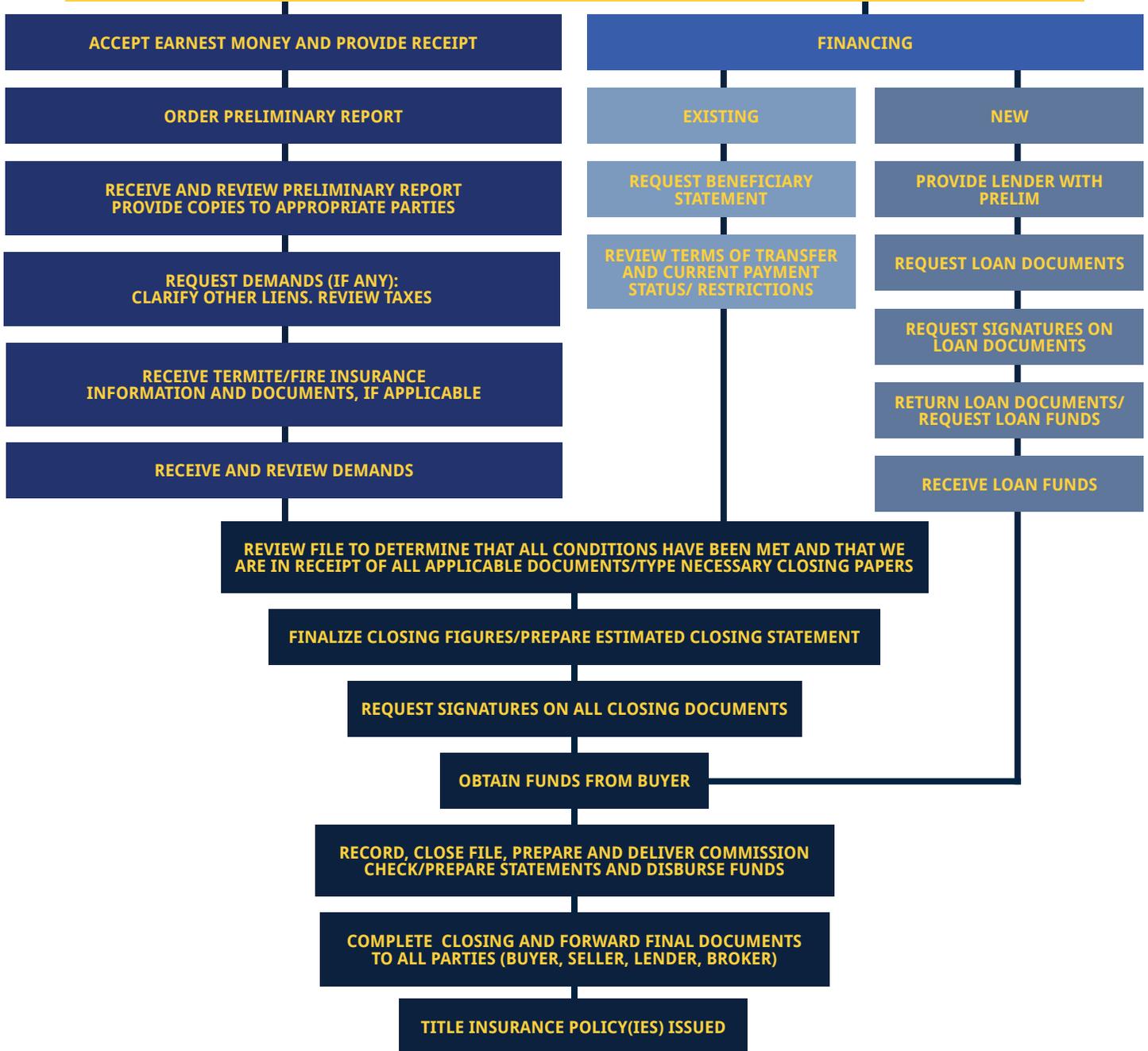
### Communication Tips for Escrow

- ✓ When calling the escrow officer, have the escrow number and buyer/seller's names handy.
- ✓ Keep the escrow officer informed on any matters that may affect the transaction.
- ✓ Direct your questions to the proper representative, such as:
  - Real Estate Agent:** Physical aspects of property, conflicts, and terms of sale.
  - Lender:** Loan terms, credit report issues, etc.
  - Escrow Officer:** Escrow instructions, documents and forms to be filled out.



# The Life of an Escrow

**ORDER IS OPENED. PREPARE ESCROW INSTRUCTIONS, NECESSARY DOCUMENTS AND COMMISSION ORDER. FORWARD TO APPROPRIATE PARTIES FOR REVIEW AND EXECUTION, NOTE: THIS IS DONE EITHER AT OPENING OR AT CLOSING DEPENDING ON THE CUSTOM OF THE COUNTY WHEREIN YOU ARE CLOSING.**





## Opening Escrow

The selection of the escrow holder is normally done by agreement between the parties to a transaction. Typically, the escrow is then opened by the real estate agent. Which agent (the “seller side” or the “buyer side”) will open the escrow is generally determined by local practice.

Escrow may be opened via telephone, email, website form or in person, depending upon the preference of the agent and which options are available through the escrow company. An escrow file number is assigned and the appropriate information is entered into the computer. Upon issuance of the escrow file number, the escrow officer will order a Preliminary Report from the title company or title department.

The escrow officer will need some basic information in order to open and proceed with the escrow:

- Correct street address, and parcel # if available
- Sales price
- Full names of all parties involved and marital status
- Contact information for all parties
- Existing lender name, loan number, contact information and approximate unpaid balance
- HOA (Homeowner’s association) information, such as address and dues
- HOA management company information (if any)
- Commission amount and additional conditions

In general, the first item to enter the escrow is the buyer’s initial deposit. The escrow file will grow, item by item, until all of the conditions have been met and the escrow is ready to close.

### The Escrow Officer Will Also Need the Following From the Buyer’s Agent:

- How the buyer(s) wants to take title (see Vesting Chart)
- New lender information
- Fire/hazard insurance information for new policy or existing policy





## Your Signing Appointment

Please refer to the following list of considerations before your signing appointment:

### **IDENTIFICATION**

There are several acceptable forms of identification which may be used during the escrow process including:

- A current driver's license
- Passport
- State of Hawaii Department of Motor Vehicles ID card

One of these forms of identification must be presented at the signing of escrow in order for the signature to be notarized.

### **VESTING FOR TITLE**

Before recording ownership for your new property, you will need to decide how you would like to hold title. You may wish to consult a lawyer, accountant, or other qualified professional before making this decision.

### **DEPOSITING FUNDS TO CLOSE ESCROW**

In order to prevent possible delays in the closing of your escrow, be prepared to provide a Cashier's or Certified check cleared through the CA Federal Reserve for the amount requested by your escrow officer. Wire instructions will be provided should you prefer to wire transfer funds into escrow.

### **LENDER'S REQUIREMENTS**

Check in with your loan officer to ensure that you have satisfied your lender's requirements before coming to the Fidelity National Title office to sign papers.

### **FIRE & HAZARD INSURANCE**

When you are buying a single-family, detached home, and in some cases, a townhouse, be sure to order your hazard insurance policy before the loan has been approved. You will then need to contact your escrow officer to provide the insurance agent's name and contact information so that they can make sure the policy complies with your lender's requirements. You must have the insurance policy in place before the lender sends money to the title company for closing. If you do not have an insurance agent, your real estate agent may be able to refer someone for you.



## Closing Costs and Who Pays What

Closing costs are what the buyer and seller will pay as part of the escrow transaction. Some fees are negotiable between the seller and buyer as to “Who Pays What.” Below is an example of some typical closing costs which may vary from county to county.\*

### YOURS or THEIRS?

#### The Personal vs. Real Property Dilemma

*The distinction between personal property and real property can be the source of difficulties in a real estate transaction. A purchase contract is normally written to include all real property, that is, all aspects of the property that are fastened down or an integral part of the structure. For example, this would include light fixtures, drapery rods, attached mirrors, trees and shrubs in the ground. It would not include potted plants, free-standing refrigerators, washer/dryers, microwaves, bookcases, swag lamps, etc.*

*If there is any uncertainty whether an item is included in the sale or not, it is best to be sure that the particular item is mentioned in the purchase agreement as being included or excluded.*

CLOSING COSTS	BUYER	SELLER
Standard Coverage for Title Insurance Premium	40%	60%
Additional Premium for any Extended Coverage Policy (Including ALTA Homeowners Policy and/or Lender's Policy)	X	
Cost of Drafting Mortgage and Note or Agreement of Sale	X	
Cost of Drafting Conveyance Documents & Bills of Sale		X
Cost of Obtaining Buyer's Consents	X	
Cost of Obtaining Seller's Consents (e.g., Lessor's consent)		X
Buyer's Notary Fees	X	
Seller's Notary Fees		X
Escrow	50%	50%
Recording Fees Except Documents to Clear Seller's Title (e.g., Deed, encroachment agreements)	X	
Recording Fees to Clear Seller's Title (e.g. Mortgage Release)		X
Required Staking or Survey		X
Condominium and Association Ownership Transfer Fees	X	
FHA or VA Discount Points and any Mortgage Fees	X	
FHA or VA Mandatory Closing Fees		X
Conveyance Tax		X
FIRPTA (Federal Withholding if Applicable)		X
HAPRTA (State Withholding if Applicable)		X

Source: Hawaii Association of Realtors® Standard Form Purchase Contract F6

\*This list is an example only of typical closing costs and may vary based on negotiations or customary area practice.



## Hawaii “Good Funds” Requirements

### Important Considerations In Preparation of Your Closing

Escrow companies in Hawaii are prohibited from disbursing funds deposited into escrow “until final settlement of the item has been received by the financial institution to which the item has been submitted for collection.” HRS § 449-16. The Hawaii Association of Realtors® standard form purchase contract provides that closing occurs and proceeds are to be disbursed to the seller when documents are recorded at the State Bureau of Conveyances. Purchase Contract § C-5.

This means that the method by which a buyer makes his or her initial deposit, or balance due monies may affect the timing of “closing”. Escrow must have confirmation that all funds necessary to close, including buyer’s additional monies and lender’s funds, before escrow allows a transaction to record. The following are the rules typically applied in setting up recordings.

- A cashier’s check or certified check payable through a Bank located in Hawaii usually clears within 1 to 3 business days after deposit into escrow.
- A personal check, corporate check, teller’s check, cashier’s check, or any other type of check drawn on a mainland financial institution may take up to six business days after deposit into escrow to clear.
- A personal check drawn on a Bank located in Hawaii usually clears three business days after deposit into escrow.
- Wire transfers are immediately disbursable upon confirmation of receipt.
- All funds received must be in U.S. Dollars. If wiring international funds which will be converted into U.S. dollars, the amount may vary and fees may incur due to currency exchange rates. It is strongly suggested that you check with your bank prior to sending international funds. Any amount owed resulting from the conversion rate or fees will be the responsibility of the sender.

The Bureau rules require that signed conveyance documents are delivered to the Bureau no later than 8:00 a.m. the day before recording. The Federal Reserve Bank system closes at 11:00 a.m.

This means that escrow must receive confirmation of “good funds” from lenders and buyers no later than 11:00 a.m. two days before recording in order to allow the closing to proceed.



## Recording Timeline

### State of Hawaii Bureau of Conveyances

NEIGHBOR ISLANDS	OAHU
<p><b>FOUR DAYS BEFORE RECORDING</b></p> <ul style="list-style-type: none"> <li>▶ All documents must be signed</li> </ul>	<p><b>THREE DAYS BEFORE RECORDING</b></p> <ul style="list-style-type: none"> <li>▶ All documents must be signed</li> </ul>
<p><b>THREE DAYS BEFORE RECORDING</b></p> <ul style="list-style-type: none"> <li>▶ Documents to Oahu in overnight pouch</li> </ul>	<p><b>TWO DAYS BEFORE RECORDING</b></p> <ul style="list-style-type: none"> <li>▶ Documents to title to review for insurability and recordability</li> <li>▶ Remainder of Buyer’s funds must be received (Cashier’s check from the 12th district or wired funds)</li> <li>▶ Lender’s funds must be received by 11:00 a.m.</li> </ul>
<p><b>TWO DAYS BEFORE RECORDING</b></p> <ul style="list-style-type: none"> <li>▶ Documents to title to review for insurability and recordability</li> <li>▶ Remainder of Buyer’s funds must be received (Cashier’s check from the 12th district or wired funds)</li> <li>▶ Lender’s funds must be received by 11:00 a.m.</li> </ul>	
<p><b>ONE DAY BEFORE RECORDING</b></p> <ul style="list-style-type: none"> <li>▶ Documents to Bureau by 8:30 a.m.</li> </ul>	<p><b>ONE DAY BEFORE RECORDING</b></p> <ul style="list-style-type: none"> <li>▶ Documents to Bureau by 8:30 a.m.</li> </ul>
<p><b>RECORDING DAY</b></p> <ul style="list-style-type: none"> <li>▶ Documents record at 8:01 a.m.</li> <li>▶ Title transferred</li> <li>▶ Funds disbursed</li> </ul>	<p><b>RECORDING DAY</b></p> <ul style="list-style-type: none"> <li>▶ Documents record at 8:01 a.m.</li> <li>▶ Title transferred</li> <li>▶ Funds disbursed</li> </ul>



## About The Loan Process

### **STEP 1: Application**

Your loan process should go smoothly if you complete your loan application properly and provide all necessary documentation to your loan consultant at the time of application.

### **STEP 2: Ordering Documentation:**

Your loan consultant will order the necessary documentation for the loan as soon as it is received. Any verifications will be mailed, and the credit report and appraisal will be ordered. You will also receive a Good Faith Estimate of your costs and details of your loan.

### **STEP 3: Awaiting Documentation:**

Within approximately two weeks, all necessary documents should be received from your loan consultant. Each item is reviewed carefully in case additional items may be needed from you to resolve any questions or problems.

### **STEP 4: Loan Submission:**

Submitting your loan is a critical part of the process. All of the necessary documentation will be sent to the lender, along with your credit report and appraisal.

### **STEP 5: Loan Approval:**

Loan approval may be obtained in stages. Usually within one to three days, your loan consultant should have pre-approval from the lender. If the loan requires mortgage insurance, or if an investor needs to review the file, final approval could take additional time. You do not have final loan approval until ALL of the necessary parties have underwritten the loan.

### **STEP 6: Lender Preparation of Documents:**

As soon as the loan is approved and all requirements of the lender have been met, the loan documents will be prepared. These documents will be sent to the escrow officer, and you will be asked to sign the documents. Your lender may require an impound account for tax installment payments, depending on the type of loan.

### **STEP 7: Funding:**

Once you have signed the documents and they have been returned to the lender, the lender will review them and make sure that all conditions have been met and all of the documents have been signed correctly. When this is completed, they will “fund” your loan. (“Fund” means that the lender will give the title company the money by check or wire.)

### **STEP 8: Recordation:**

When the loan has been funded, the title company will record the mortgage with the county in which the property is located (usually within 2 days). Upon receipt of confirmation of the deed being recorded, title or escrow will then disburse monies to the appropriate parties. At this time, in most cases, your loan is considered complete.



## LOAN FAQs

### When do I sign loan documents?

Generally, your escrow instructions will be mailed to you for completion and signature. Your escrow officer or real estate agent will contact you to make an appointment for you to sign your final loan papers. At this time, the escrow holder will also tell you the amount of money you will need (in addition to your loan funds) to purchase your new home. The lender will send your loan funds directly to the title company.

### What do I bring to my loan document signing appointments?

Obtain a cashier's check made payable to your escrow company or title company in the amount indicated to you by the escrow officer. You may also wire funds. A personal check will delay closing because the check must clear before funds are disbursed.

### Please bring one of the following with you to your signing:

- Valid state ID card
- Driver's license
- Passport

**(These items are needed by a Notary Public to verify your identity. It is a routine but necessary step for your protection).** Make sure you are aware of your lender's requirements and that you have satisfied those requirements before you come to the escrow company to sign your papers. Your loan officer or real estate agent can assist you.

### What's the next step after I've signed the loan documents?

After you have signed all the necessary instructions and documents, the escrow holder will return them to the lender for final review. This review usually occurs within a few days. After the review is completed, the lender is ready to fund your loan and informs the escrow holder.

### When will I receive the deed?

The original deed to your home will be mailed directly to you at your new home by the County Recorder's office. This service takes several weeks (sometimes longer, depending on the County Recorder's work volume).

## What is a "Payoff"?

A loan payoff is an extremely important service provided by title companies to facilitate the handling of money in the closing of a real estate transaction. It is the receipt of funds from the buyer and the payment of the obligations of the seller (if any) in conjunction with a real estate transaction. The payoff function is performed by Fidelity National Title as part of the escrow process.

### Commonly Used Payoff Terms:

**Prefigures:** Estimated payoff figures calculated and given prior to closing upon request. These figures are only valid through the date given and are based on the information provided at the time.

**Good Funds:** Fidelity National Title must be in receipt of "good funds" prior to disbursing on a payoff. Types of good funds include: a) funds wired into Fidelity National Title; b) a cashier's, teller's or certified check (provide next day availability after deposit to comply with AB51 2); c) other local checks (provide availability of funds two days after deposit), and d) out of area checks (provide availability of funds five days after deposit).

**Demands:** Demands must include specific payoff information concerning the particular property and must be signed. It is the responsibility of the Escrow Officer to order and provide all necessary demands, including any updates or changes on a timely basis.

**Taxes:** Outstanding property taxes can be paid out of the payoff proceeds.

**Refunds:** Any overpayment of demands will be refunded to the escrow upon receipt from the lender. Refunds typically take two to six weeks to process.

**Shortages:** Your Escrow Officer will contact you if there is a shortage of the necessary funds to cover the outstanding obligations. The shortages must be received prior to payoff.

**Disbursement Checks:** Checks are delivered locally to lending institutions by a contracted messenger service. Checks to individuals and to out of area lenders are typically sent via an overnight delivery company.

**Wire Transfers:** Funds can be wired into and out of Fidelity National Title offices with our bank.



## PMI: “Private Mortgage Insurance”



### What Is PMI?

Buying a home is easier than ever, thanks to the availability of private mortgage insurance, or PMI. Private mortgage insurance has made it possible for qualifying buyers to obtain mortgages with a down payment as low as 3%. Such mortgages are increasingly in demand in today's home market because potential homeowners, especially first time home buyers, are unable to accumulate the 20 or 30% down payment that would be required without private mortgage insurance.

### Definition PMI

PMI is a type of insurance required by the lender that helps protect lenders against losses due to foreclosure. This protection is provided by private mortgage insurance companies and enables lenders to accept lower down payments than would normally be allowed.

### When Do I Need to Carry PMI?

If you make a down payment of less than 20% of the home sales price, your lender will require you to carry PMI. This will protect the lender from a potential loss if you default on your low down payment loan.

### How Long Am I Required to Carry PMI?

PMI can usually be canceled by the home buyer when they have at least 20% equity in the home, either due to payment of the principal or the appreciation of the property. When you believe your home has achieved 20% equity, you can contact your loan server for guidelines. Usually lenders will require an appraisal on the property to verify the equity.

### How Much Is PMI Going to Cost Me?

The House Banking Committee has estimated that the average cost of mortgage insurance is between \$300 and \$900 a year. Premiums are based on the amount and terms of the mortgage and will vary according to loan to value ratio, type of loan and the amount of coverage required by the lender.

### What Are the Payment Options for PMI?

PMI can be paid on either an annual, monthly or single premium plan.



## Other Parties to an Escrow Transaction



In addition to the buyer, seller, lender and real estate agent(s), Escrow may involve several other parties. For example: Appraisal, Home Warranty, Home Inspection, Termite/Pest Inspection and Disclosure Report.

### Appraisal

If the buyer is securing a new loan for the purchase, an appraisal will be required by the lender. An appraiser will:

- Research the subject property as to year built bedrooms, baths, lot size and square footage.
- Compare data of recent sales in the subject's neighborhood, typically within a one mile radius. The appraiser usually locates at least three (and preferably more) similar homes that have sold within the past six months. These homes are considered the "Comparable Properties" or "Comps" for short.
- Field inspection is conducted in two parts: (1) the inspection of the subject property, and (2) the exterior inspection of the comparable properties.

The subject property inspection includes taking photos of the front and rear of the home (that may include portions of the yard) and photos of the street scene. The appraiser also makes an interior inspection for features and conditions which may detract from or add to the value of the home. A floor plan of the home is drawn and included while doing the inspection.

### Home Warranty

Home Warranties offer advantages to both the buyer and seller. This policy protects the buyer by paying for certain repairs and costs of major mechanical systems and major appliances in the home such as heating and air conditioning. There are a variety of plans available.

#### Benefits of Home Warranty Coverage to the Seller:

- Home may sell faster and at a higher price
- Optional coverage during the listing period
- Protection from legal disputes that occur after the sale increases the marketability of home

#### Benefits of Home Warranty Coverage to the Buyer:

- Warranty coverage for major systems and built-in appliances
- Protects cash flow
- Puts a complete network of qualified service technicians at the Buyer's service
- Low deductible

Most home warranty plans can be paid for at the close of escrow. A copy of the invoice is presented to the escrow company and it becomes part of the seller's closing costs. FNF offers Home Warranty coverage at [www.HomeWarranty.com](http://www.HomeWarranty.com) or call 1.800.862.6837

### Home Inspections

A home inspection is another component of the escrow process. It is a physical examination to identify material defects in the systems, structure and components of a building, such as foundations, basements and under-floor areas, exteriors, roof coverings, attic areas and roof framing, plumbing, electrical systems, heating and cooling systems, fireplaces and chimneys, and building exteriors.

### Is Your Home Inspector Insured?

They should have: Professional Liability Insurance Coverage, General Liability and Workers Compensation.

### How the Seller Should Prepare for a Home Inspection?

The seller should have the property fully accessible, including elimination of stored objects that may prevent the inspector from accessing key components of the home. Areas of special concern are attics, crawl spaces, electric panels, closets, garages, gates/yards, furnaces and water heaters. All utilities should be on with functioning pilots lit.

### Inspector's Responsibility to the Homeowner

Respect the property. Leave the property as they found it. Answer questions about the report after the inspection is completed. Provide a copy of the report on site.

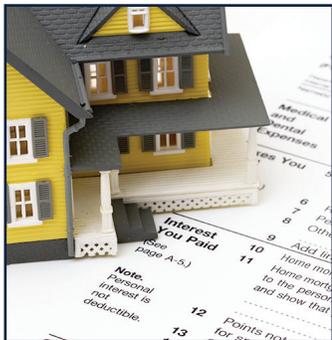
### Termite/Pest Inspection

This report is prepared by a State Certified Inspector as evidence of the existence or absence of wood destroying organisms or pests which were visible and accessible on the date the inspection was made. In almost every instance when they receive a request for an inspection the caller refers to it as a "termite" inspection. In addition to looking for subterranean termites, the inspector is also looking for signs of activity from other wood organisms such as carpenter ants, carpenter bees, wood destroying fungus, or dry wood termites.

These conditions are easy to spot and in most cases are simple and inexpensive to correct. If you aren't certain about the condition of your property, seek assistance from a State Certified Termite Inspector.



## Understanding Taxes in Escrow



There are many types of tax issues which should be considered during a real estate transaction. Fidelity National Title provides the following information as a resource only and we always recommend that a seller or buyer consult

with their legal and tax professionals for advice.

Topics we will briefly overview which may be a part of, or a result of, your escrow include:

- Capital Gains Tax
- Change of Ownership Filing
- Transfer Tax
- FIRPTA
- Property Taxes
- Supplemental Taxes
- Mello Roos

The I.R.S. provides free publications that explain the tax aspects of real estate transactions. A few of these include:

- Publication #523: Selling Your Home
- Publication #530: Tax Information for First Time Homeowners
- Publication #544: Sales and Other Dispositions of Assets
- Publication #551: Basis of Assets

### Federal Requirements

The Internal Revenue Service (IRS) requires that sellers report certain information pertaining to sales of real property. Under the Tax Reform Act of 1986, reportable transactions include sales and exchanges of properties including, but not limited to, houses, townhouses and condominiums. Also reportable is stock in cooperative housing corporations and mobile homes without wheels. Specifically excluded

from reporting are foreclosures and abandonment of real property, as well as financing or refinancing of properties.

The escrow officer, as the settlement agent, will ask the seller to complete a Certificate for Information Reporting for the 1099 S form which may be required by the IRS. The seller is required to provide their correct taxpayer identification number (social security number), as well as the closing date of the transaction and gross proceeds of the transaction. Most settlement agents now transmit the reportable information electronically to the IRS at the end of the year, although a “hard copy” of the form is included in the seller’s closing documents.

### Withholding Requirements

Some states require that certain sellers “prepay” their required state taxes through withholding of a percentage of the sale proceeds. State law requires the buyer accomplish the withholding, and the buyer may be subject to penalties for failure to withhold and send the appropriate amount to the State Franchise Tax Board. However, the buyer may delegate this responsibility to the escrow holder, and the escrow holder may charge a fee for this service. The law requires the escrow agent to give written notice of the withholding requirement to the buyer.

Most sellers will qualify for an exemption to the withholding law. Here are some of the exemption situations:

- Principal residence
- Property that is part of a like-kind exchange
- Properties under \$100,000
- Sales that result in zero gain or loss for state tax purposes
- Property owned by certain corporations and partnerships
- Property ownership by tax exempt entities

*Continued, next page.*



# Fidelity National Title®

Trusted everywhere,  
every day.

## Understanding Taxes in Escrow, continued.

The escrow holder will provide a state withholding form to the seller to help determine if any of the exemptions apply. The withholding guidelines can seem quite complex, but your escrow officer has forms and educational materials to help your clients. Further information is also available through your local Franchise Tax Board or from the American Land Title Association (ALTA).

### Change of Ownership Filings

When property changes hands, local government agencies require notice of change of ownership. At the local level, this would be any county office that assesses or collects taxes. Reporting a change in the ownership of the property allows the local jurisdiction to assess the tax liability for each property as the title is transferred from seller to buyer.

The reporting documents vary from state to state, but all states require at minimum the names of the seller and buyer, assessor's parcel number or other property identifying number, the property location and tax address. Also required is the total purchase price, terms of sale and signature of the new owner. The reporting document is recorded along with documents evidencing a change in ownership.

Penalties or fines may be assessed from the governing body for failure to file the document as required by state or local laws. The escrow officer will generally assist the client in completing the document and ensuring that it reaches the Recorder's Office along with the other documents pertinent to the change of ownership.

Some situations which appear to be a change of ownership are exempt from the filing of this type of document, including corrections to the record and status changes such as a change in vesting.

### Transfer Taxes

Transfer Tax, often called Real Property Transfer Tax, is a tax collected by the County Recorder when an interest in real property is conveyed. It is paid at the time of recording, and is computed using the actual

sales price. An amount, legislated by the state or county, is charged per \$500 or \$ 1,000 of the sales price. Although it is common for the seller to pay this tax, in some areas tradition dictates that the buyer and seller will split the payment.

Many cities have levied an additional tax within their jurisdictions. In some counties, these taxes are collected by the County Recorder along with county transfer tax, but in other areas a separate check will be mailed to the city. Your escrow officer is familiar with the taxes required and will coordinate payment of the appropriate amount.

### Property Taxes

*See tax calendar example next page.*

Homeowners pay property taxes to their appropriate assessment, collection or franchise tax department in each county. A change in ownership or the completion of new construction could result in a change in the assessed value of the property and may result in the issuance of a supplemental property tax bill. Taxes are due on predesignated dates and become delinquent when not paid. Penalties are assessed for delinquent taxes. The yearly "tax calendar" varies by state.

In addition to standard property taxes, many jurisdictions also contain special assessment districts, which may have been formed as a means of financing infrastructure. Bonds may have been sold to finance the infrastructure and the ultimate property owner continues to make payments on the principal and interest on the bond. The bond issues vary in size and term. Other special city and county districts may be assessed for a variety of purposes, including street lights and traffic signals, street maintenance, certain educational purposes, etc.



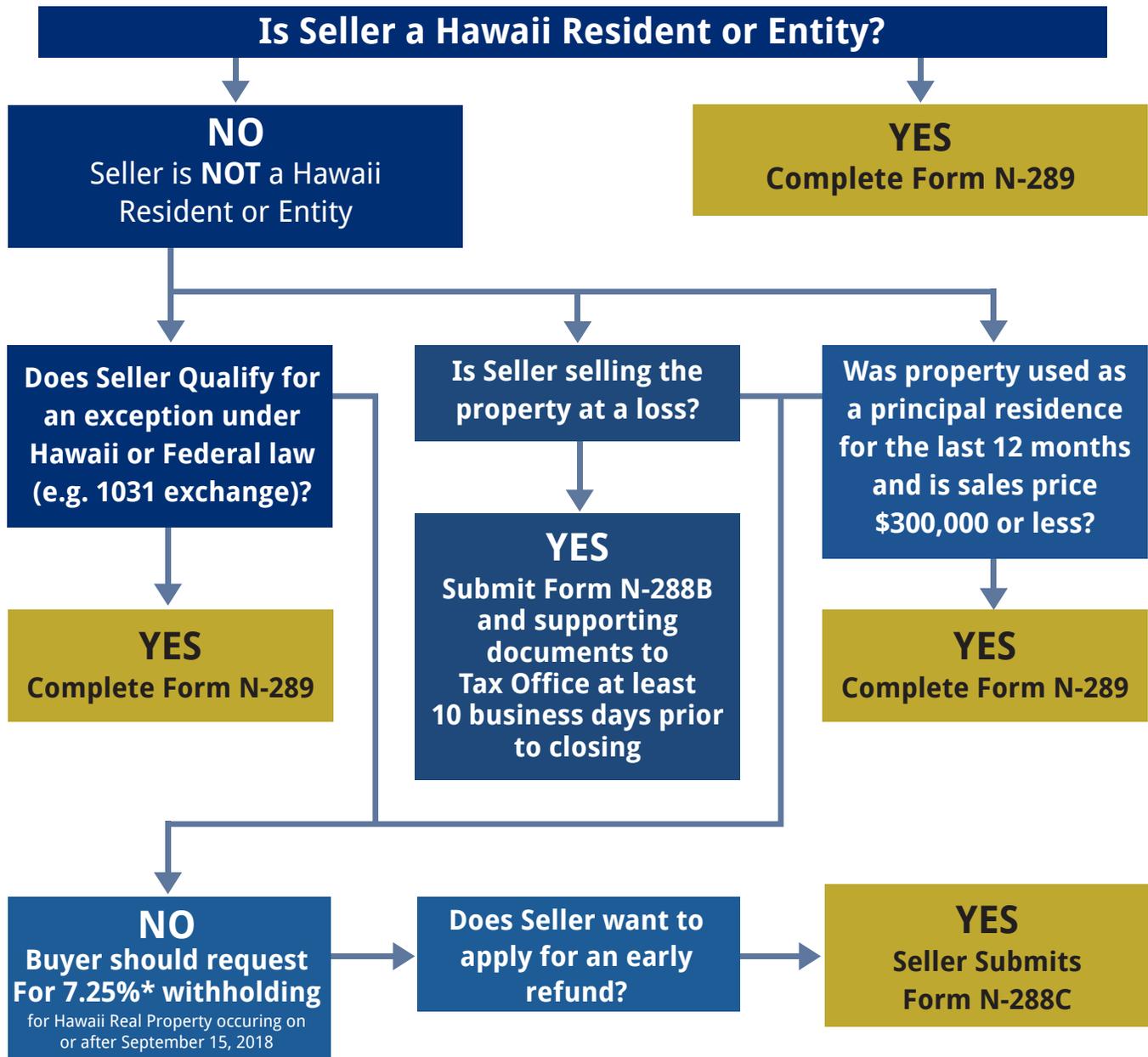
## Real Property Tax Rates

STATE OF HAWAII: Tax Year: July 1, 2018 to June 30th, 2019

County	Class	Net Taxable-Bldg. Tax Rates Per \$1,000	Net Taxable-Land Tax Rates Per \$1,000
<b>Honolulu</b>	Agricultural	\$5.70	\$5.70
	Agricultural Vacant	\$8.50	\$8.50
	Commercial	\$12.40	\$12.40
	Hotel/Resort	\$12.90	\$12.90
	Industrial	\$12.40	\$12.40
	Preservation	\$5.70	\$5.70
	Public Service	\$0.00	\$0.00
	Residential	\$3.50	\$3.50
	Residential A (Less than \$1M)	\$4.50	\$4.50
	Residential A (Over \$1M)	\$9.00	\$9.00
<b>Hawai'i</b>	Affordable Renting Housing	\$6.15	\$6.15
	Agricultural/Native Forests	\$9.35	\$9.35
	Apartment	\$11.70	\$11.70
	Commercial	\$10.70	\$10.70
	Conservation	\$11.55	\$11.55
	Homeowner	\$6.15	\$6.15
	Hotel/Resort	\$11.55	\$11.55
	Industrial	\$10.70	\$10.70
	Residential	\$11.10	\$11.10
<b>Maui</b>	Residential		
	▶ Homeowner (After Homeowner's Exemption)	\$2.85	\$2.85
	▶ Second Home	\$5.52	\$5.52
	Apartment	\$6.31	\$6.31
	Agricultural	\$6.00	\$6.00
	Commercial	\$7.25	\$7.25
	Commercial Residential	\$4.55	\$4.55
	Conservation	\$6.35	\$6.35
	Hotel/Resort	\$9.37	\$9.37
	Industrial	\$7.45	\$7.45
	Short Term Rental	\$9.28	\$9.28
Time Share	\$15.41	\$15.41	
<b>Kaua'i</b>	Agricultural	\$6.75	\$6.75
	Commercial	\$8.10	\$8.10
	Commercial Residential	\$5.05	\$5.05
	Conservation	\$6.75	\$6.75
	Homestead	\$3.05	\$3.05
	Hotel/Resort	\$10.85	\$10.85
	Industrial	\$8.10	\$8.10
	Residential	\$6.05	\$6.05
	Residential Investor	\$8.05	\$8.05
	Vacation Rental	\$9.85	\$9.85



## HARPTA: Hawaii Real Property Tax Act



This information is presented for informational purposes only. It is not our intention to provide any legal, financial or business advice. For specific information, please consult a qualified advisor.

\*FNT Internal Update July, 2018



## About HARPTA | FIRPTA

### Understanding the Foreign Investment in real Property Tax Act

**The Hawaii Real Property Tax Act (HARPTA)** requires the buyer who purchases real property from a non-resident of Hawaii to withhold **7.25%\*** of the amount realized (generally the sales price) and remit it to the Department of Taxation within 20 days of closing unless an exemption applies.

The 7.25% withholding represents an estimate of the Hawaii capital gains tax that may be owed by the non-resident when selling real property in Hawaii.

The standard Hawaii Association of Realtors Purchase Contract provides that escrow is to withhold and remit the HARPTA amount to the Department of Taxation unless the seller provides the buyer with a certificate of exemption or waiver from HARPTA.

It is the seller's burden to prove that an exemption / waiver applies and for the buyer to acknowledge and approve the seller's exemption / waiver prior to closing. Under Hawaii law, it is the buyer's responsibility to determine if the seller is a non-resident of Hawaii and that the proper withholding amount is remitted to the Department of Taxation on a timely basis.

## FIRPTA - Foreign Investment Real Property Tax Act

**The Foreign Investment in Real Property Tax Act (FIRPTA)** requires the buyer who purchases real property from a foreign seller to withhold 10% or 15% of the amount realized (generally the sales price) and remit it to the IRS within 20 days of closing unless an exemption applies. The withholding percentage will depend upon the sales price and whether the buyer or buyer's family member intends to use the real property as a residence.\*

The withholding percentage represents an estimate of the federal capital gains tax that may be owed by the foreign seller when selling real property in the United States.

The standard Hawaii Association of REALTORS® Purchase Contract provides that escrow is to withhold and remit the FIRPTA amount to the IRS unless the seller provides the buyer with a certificate of exemption or waiver from HARPTA.

It is the seller's burden to prove that an exemption / waiver applies and for the buyer to acknowledge and approve the seller's exemption / waiver prior to closing. Under federal law, it is the buyer's responsibility to determine if the seller is a foreigner subject to FIRPTA withholding and that the proper withholding amount is remitted to the IRS on a timely basis.

\*Buyer or member of buyer's family must have definite plans to reside in the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer.

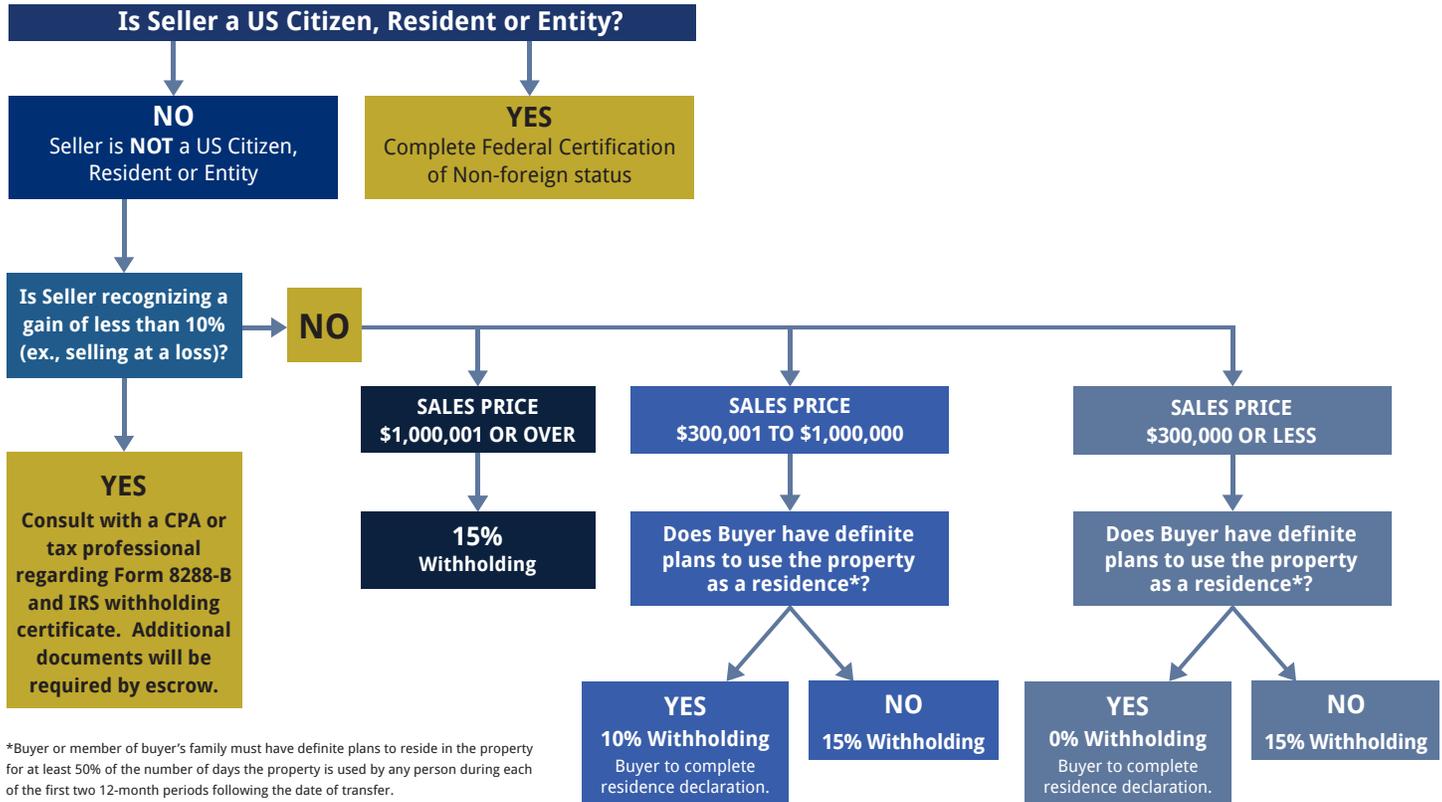
This information is presented for informational purposes only and is deemed reliable but is not guaranteed. It is not our intention to provide any legal financial or business advice. For specific information, please consult a qualified advisor.

\*FNT Internal Update July, 2018



## About FIRPTA

Continued from previous page



### Notes cited from the previous page:

<sup>1</sup> Closing date is generally the date of recordation and disbursement of funds.

<sup>2</sup> Effective date of this FIRPTA provision of the Act "shall apply to dispositions after the date which is 60 days after the date of the enactment of the Act." The date of enactment of the Act is December 18, 2015.

<sup>3</sup> The Act includes other significant changes to FIRPTA and other tax laws which are not addressed in this material.

<sup>4</sup> Subject to any FIRPTA exemptions or exclusions under the Internal Revenue Code. "Foreign seller" is a general reference to nonresident alien individual or foreign corporation and is not a defined term.

under the Internal Revenue Code.

<sup>5</sup> Sales price can be exactly \$1,000,000.00 but may not exceed this amount.

<sup>6</sup> This rule pertaining to \$300,000 or less sales price is an existing provision under the Internal Revenue Code 26 USC 1445(b)(5). Under this specific provision (26 USC 1445(b)(5)), a property is "acquired for use as a residence if you or a member of your family has definite plans to reside in the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer" and the buyer must be an individual. Please consult with a tax professional regarding the definition of "residence" under the new FIRPTA law under the Act.



## What is a 1031 Exchange?

*Section 1.1031, of the Internal Revenue Code of 1986, as amended, offers real estate investors one of the last great investment opportunities to build wealth and save taxes. By completing an exchange, the investor (Exchanger) can dispose of their investment property, use all of the equity to acquire replacement investment property, defer the capital gain tax that would ordinarily be paid, and leverage all of their equity into the replacement property.*

### Two requirements must be met to defer the capital gain tax:

- (a) the Exchanger must acquire like-kind replacement property and
- (b) the Exchanger cannot receive cash or other benefits (unless the Exchanger pays capital gain taxes on this money).

### The tax code states

Investors can accomplish virtually any investment objective with exchanges including greater leverage, diversification, freedom from joint ownership, improved cash flow, geographic relocation and/or property consolidation.

*“No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment purposes if such property is exchanged solely for property of a like-kind which is to be held for either productive use in trade or business or for investment purposes.”*

### What is Involved in a Delayed Exchange?

A typical tax deferred exchange is very similar to a taxable transaction except that prior to closing on the property being sold, a qualified intermediary, is assigned into the Sale Contract. They sell the property to the buyer and transfer the proceeds safely into a separate exchange account. (The IRS stipulates the exchanger cannot be in actual or constructive receipt of funds at any time during the exchange.)

The exchange period begins with the transfer of the first property providing the investor 45 days to identify, and a total of 180 days to close, on “like-kind” replacement property. The exchange is completed when the qualified intermediary is assigned into the Purchase Contract, utilizes the proceeds received to acquire the replacement property, and instructs the closer to transfer ownership to the exchanger via direct deed.

### What are the Exchange Requirements?

- Purchase Equal or Greater Value
- Reinvest all Net Equity
- Equal or greater debt. (Exception: A reduction in debt can be offset with additional cash, however a reduction in equity cannot be offset by increasing debt.)

Exchanges must be completed within strict time limits with absolutely no extensions. The Exchanger has 45 days from the date the relinquished property closes to identify potential replacement properties. This involves a written notification to the Qualified Intermediary listing the addresses or legal descriptions of the potential replacement properties. The purchase of the replacement property must be completed within 180 days after of the close of the relinquished property. After the 45 days has passed, the Exchanger may not change their Property Identification list and must purchase one of the listed replacement properties or the exchange fails!

To avoid the payment of capital gain taxes the Exchanger should follow three general rules: (a) purchase a replacement property that is the same or greater value as the relinquished property, (b) reinvest all of the exchange equity into the replacement property, and (c) obtain the same or greater debt on the replacement property as on the relinquished property. The Exchanger can offset the amount of debt obtained on the replacement property by putting the equivalent amount of additional cash into the exchange.

In the case of real property exchanges, the Exchanger must sell property that is held for income or investment purposes and acquire replacement property that will be held for income or investment purposes. This is the like-kind property test. I.R.C Section 1031 does not apply to exchanges of stock in trade, inventory, property held for sale, stocks, bonds, notes, securities, evidences of indebtedness, certificates of trust or beneficial interests or interests in a partnership.



## Glossary of Terms

The following is a short glossary of commonly used terms during escrow transactions. For a detailed explanation of the meaning of these terms, please consult an attorney or real estate professional. For additional terms and definitions, please visit us online at [www.FNTIC.com](http://www.FNTIC.com).

**Adjustable Rate Mortgage (ARM):** A mortgage in which the interest rate is adjusted periodically in accordance with a market indicator, to more closely coincide with the current rates. Also sometimes known as renegotiable rate mortgage, the variable rate mortgage, or the graduated rate mortgage.

**Amendments:** A change to any part of an agreement without changing the general essence of the original.

**Amortization:** Reduction of the principal of a debt in regular, periodic installments.

**Annual Percentage Rate (APR):** An interest rate reflecting the cost of a mortgage as a yearly rate. This rate is likely to be higher than the stated note rate or advertised rate on the mortgage, because it takes into account point and other credit cost. The APR allows home buyers to compare different types of mortgages based on the annual cost for each loan.

**Assumption of Mortgage:** An obligation undertaken by a new purchaser of land to be liable for payment of an existing note secured by a mortgage.

**Beneficiary:** The recipient of benefits most often from a deed of trust. This is usually the lender.

**Buyer's Agent:** The agent or broker serving as a representative of the buyer in order to identify a property and negotiate on their behalf for the purchase.

**Caps:** Consumer safeguards that limit the amount the interest rate on an adjustable rate mortgage can change at each adjustment or over the life of the loan.

**Conditions, Covenants & Restrictions (CC&R's):** A document that controls the use, requirements and restrictions of a property.

**Certificate of Reasonable Value (CRV):** An appraisal issued by the Veterans Administration showing the property's current market value.

**Closing (also called "settlement"):** The completion of a real estate transfer, where the title passes from seller to buyer, or a mortgage lien is given to secure debt.

**Comparable Sales:** Also referred to as "comps". Sales of other properties that have characteristics similar to the subject property. Generally used for the preparation of an appraisal.

**Condominium:** A statutory form of real estate development of separately- owned units and jointly-owned common elements in a multi-unit project.

**Conventional Mortgage:** A mortgage securing a loan made by investors without governmental underwriting, i.e., a loan which is not FHA insured or VA guaranteed.

**Deed:** Written instrument which, when properly executed and delivered, conveys title.

**Discount Point:** An additional charge made by a lender at the time a loan is made. Points are measured as a percent of the loan, with each point equal to one percent.

**Earnest Money Deposit (EMD):** A deposit of funds made by a buyer of real estate as evidence of good faith.

**Easement:** A non-possessory right to use all or part of the land owned by another for a specific purpose.

**Equity:** The difference between the fair market value and current indebtedness, also referred to as the owner's interest. The value an owner has in real estate over and above the obligation against the property.

**Federal Housing Administration Loan (FHA Loan):** A loan insured by the Federal Housing Administration, open to all qualified home purchasers.

**Farmers Home Administration Loan (FMHA Loan):** A loan insured by the federal government similar to FHA loan, but usually used for residential properties in rural areas.

**Federal National Mortgage Association (FNMA):** Also known as "Fannie Mae." A U.S. government sponsored corporation dealing in the purchase of first mortgages for the secondary market.

**Fee Simple Deed:** The absolute ownership of a parcel of land. The highest degree of ownership that a person can have in real estate, which gives the owner unqualified ownership and full power of disposition.

**Joint Tenancy:** An equal undivided ownership of property by two or more persons. Upon death of any owner, the survivors take the decedent's interest in the property.

**Legal Description:** The description of land based on government surveys that identifies exact boundaries of an entire parcel of land and recognized by law.



## Glossary, continued.

**Lien:** A claim upon a piece of property for the payment or satisfaction of a debt or obligation.

**Listing Agent:** The agent or broker in agreement with the property owner to sell the subject property and list the property in the Multiple Listing Service.

**Loan-To-Value Ratio:** The relationship between the amount of the mortgage loan and the appraised value of the property expressed as a percentage.

**Mortgage:** A conditioned pledge of property to a creditor as security for the payment of a debt.

**Multiple Listing Service:** The database of properties listed for sale by Realtors® who are members of their local Association of Realtors®.

**Negative Amortization:** Occurs when your monthly payments are not large enough to pay all the interest due on the loan. This unpaid interest is added to the unpaid balance of the loan. The danger of negative amortization is that the home buyer ends up owing more than the original amount of the loan.

**Personal Property:** Any property which is not real property, e.g., money, savings accounts, appliances, cars, boats, etc.

**Points (also called "commission or discount" points):** Each point is equal to 1% of the loan amount (e.g., two points on a \$100,000 mortgage would cost \$2000).

**Power of Attorney:** A written instrument in which a principal grants authority to a specified agent.

**Principal, Interest, Taxes and Insurance (PITI):** Also called monthly housing expense. This is the combined Principal, Interest, Taxes and Insurance for a total payment.

**Private Mortgage Insurance (PMI):** In the event that a buyer does not have a 20% down payment, lenders will allow a smaller down payment—as low as 3% in some cases. With the smaller down payment loans, however, borrowers are usually required to carry private mortgage insurance. Private mortgage insurance will usually require an initial premium payment and may require an additional monthly fee, depending on the loan's structure.

**Purchase Agreement:** The contract between the Buyer and Seller for the purchase of a designated property.

**Quitclaim Deed:** A deed that serves as a release with the purpose of transferring any title, interest or claim held by the grantor. The Quitclaim Deed does not contain any warranty of valid interest or title by the grantor.

**Real Estate Agent:** An individual licensed by the state to represent parties in the transfer of property.

**Realtor®:** A real estate broker or an associate holding active membership in a local real estate board affiliated with the National Association of Realtors®. Every Realtor is a Real Estate Agent but not every Real Estate Agent necessarily maintains the designation of Realtor®.

**Recording:** The filing of documents for real property with the County Recorder's office that becomes public record.

**Subdivision:** A tract of land surveyed and divided into lots for purposes of sale.

**Tenancy in Common:** An undivided ownership in real estate by two or more persons, without right of survivorship – interests need not be equal.

**Trust Account:** An account separate and apart and physically segregated from the broker's own, in which the broker is required by law to deposit all funds collected for clients.

**Trustee:** The neutral third party in the deed of trust with limited powers. When the loan is paid in full, the property is reconveyed by the trustee back to the person or persons legally entitled to the land, or if delinquent, the property will be conveyed pursuant to non judicial foreclosure proceedings, to the highest bidder in a public sale.

**Trustor:** The borrower, owner and guarantor of the property conveyed in a deed of trust.

**Veterans Administration Loan (VA Loan):** Housing loan to veterans by banks, savings and loans, or other lenders that are guaranteed by the Veterans Administration, enabling veterans to buy a residence with little or no down payment.

**Warranty:** In a broad sense, an agreement or undertaking by a seller to be responsible for present or future losses of the purchaser occasioned by deficiency or defect in the quality, condition or quantity of the thing sold. In a stricter sense, the provision or provisions in a deed, lease or other instrument conveying or transferring an estate or interest in real estate under which the seller becomes liable to the purchaser for defect in or encumbrances on the title.



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