

# UNDERSTANDING WITHHOLDINGS

## ON REAL ESTATE SALES: PART TWO



## REAL ESTATE WITHHOLDING FAQ's.



### WHAT HAPPENS IF THERE ARE SEVERAL SELLERS ON TITLE?

If the total purchase price exceeds \$100,000.00, withholding rules apply. To determine the amount of withholding, each owner is considered separately and the withholding is calculated on each owner's pro-rata share of sales proceeds. It is possible for the transaction to be exempt for one seller but not for the other part owners.

### HOW DO I KNOW IF THE PROPERTY QUALIFIES AS MY PRINCIPAL RESIDENCE?

The rules incorporate Internal Revenue Code Section 121 to determine whether the property qualifies as a principal residence. There are two separate exemptions under California law which relate to the use and ownership tests under Section 121. Generally, the seller will either have had to have owned and lived in the property for two of the previous five years or the last use will have to have been as the seller's principal residence. Note that the two year period may be made up of different blocks of time which add up to two years over the five year period. A seller who lived in the property for one year, then rented it out for a period of time followed by another year of residency in the property would qualify for the exemption.

### WHAT IS THE ROLE OF THE ESCROW HOLDER REGARDING WITHHOLDING?

The law requires the escrow holder to provide a notice of the requirements. The escrow holder cannot make a legal determination as to whether any exemption applies.

### WILL THE ESCROW AGENT DO THE WITHHOLDING OF THE SELLER'S MONEY ON BEHALF OF THE BUYER?

The escrow agent may withhold and remit to the Franchise Tax Board if the parties agree. The fee for this service may not exceed \$45.00.

### HOW WILL A SELLER GET THE WITHHOLDING RETURNED?

The only way to recover the withholding is by filing a California State Income Tax Return for the year in which the sale occurred. The seller will be entitled to a refund in the amount that the withholding exceeds the amount of capital gains tax due by reason of the sale.

### DOES IT MATTER IF THE SELLER LOST MONEY ON OTHER REAL ESTATE OR NON-REAL ESTATE TRANSACTIONS?

No. Each transaction is considered separately.

### WHAT HAPPENS IF THE PROPERTY IS HELD IN TRUST?

If the trust is revocable, then the rules apply as if the seller was the individual who has the power to revoke the trust. If the trust is irrevocable then the trust itself is treated as the seller and withholding may be required if there are no exceptions.