

Withholding on Real Estate becomes law

Certain dispositions of California real estate interests that occur on or after January 1, 2003 will be subject to withholding. As part of the budget solutions proposed by members of the California Legislature, Assembly Bill 2065, requires all real estate transferees (buyers) to withhold 3 1/3% of the sales price of specified California real property. The amount withheld shall be held in trust for the State of California according to the law. The sales price is defined to mean the cash paid, plus the fair market value of property transferred plus any liability assumed. **It does not subtract any expenses of the sale.**

There are three classes of transferors:

- * Individuals
- * Persons (but not certain partnerships, or an individual or a corporation) where the funds are to be distributed to a transferor outside the state or to the financial intermediary of the transferor.
- * Corporations

Under the law, 3 1/3% of the sales price is required to be withheld unless:

1. The property sales price is less than \$100,000; or
2. The property is the principle residence of an individual transferor, or
3. The property is transferred to a corporate beneficiary by a foreclosure or a deed in lieu; or
4. The property transferred by an individual and will be replaced in like kind (1031 exchange);
or
5. The property transferred by an individual as an involuntary conversion and the transferor certifies an intent to acquire and replacement property which qualifies for deferral under IRS Section 1033; or
6. The transferor is an individual who certifies that the transaction will result in a loss for California income tax purposes; or
7. The transferor is a corporation unless immediately after the transfer, the corporation has no permanent place of business in California.

An Escrow Agent Would:

1. Provide written notification of the withholding requirements to parties;
2. Provide certification forms for the exemptions contained in the bill;

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3. Provide instructions to be signed by the parties authorizing the withholding and remitting of the amount to the Franchise Tax Board along with any charge imposed for withholding and remitting, not to exceed \$42.

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