

House Call Real Estate Newsletter

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Each office independently Owned & Operated



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We appreciate your referrals – if you know of someone thinking of buying or selling, please consider passing on our info.

LISTINGS:

Details at:

TomAndDianeMiller.com



Gahanna
3 BR, 2.5 BA
\$325,000



Baltimore
Nearly 20 acres. House
w/pond, pole bldg (w/
car lift) \$875,000

What is FIRPTA?

Foreign Investment in Real Property Tax Act – is a 15% withholding tax assessed at time of closing on the gross sales price, without regard to gain or loss, if the seller is a foreign person/entity.

- Assessable when ownership in real property changes ownership.
- No treaty can abate withholding.
- FIRPTA funds must be sent within 20 days of closing unless an exception applies.
- 1031 Exchanges – FIRPTA still applies and home country may not recognize gain deferral.

In most cases, the transferee/buyer is the withholding agent. The burden lays with the buyer determining if the seller is a foreign person. If the transferor is a foreign person and you, as the buyer, fail to withhold, you may be held liable for the tax.

If, for some reason, the title company or seller's accountant prepares the FIRPTA forms incorrectly, the payment arrives late to the IRS or even if the IRS misplaces the funds, the **buyer** is considered the statutory withholding agent for FIRPTA (and therefore responsible for any issues), not the title company or CPA.

This is very broad overview of the FIRPTA tax – FIRPTA language was added into our Real Estate Contracts a couple years back. While it doesn't come up often, you can now say you've heard of it.

Taxes

If you bought/sold a property in 2021 and need a copy of your Final Settlement Statement, send us a quick email and we'll send it your way.

Eminent Domain

Most everyone has heard the term 'eminent domain', but what about Adverse Possession? Adverse Possession is a legal doctrine in Ohio that gives a squatter or trespasser the right to obtain lawful possession of the land they care for - even if it is under someone else's ownership.

Quick example - Benjamin and Jackie live next to one another. The boundary between their properties isn't marked by any fence or other divider. Benjamin builds a doghouse on Jackie's side of the property, covering about four square feet of earth. Jackie doesn't say anything. Benjamin often visits the doghouse, to take food to his dog and so forth. He does this for 21 years and a succession of dogs. Under this scenario, Benjamin can probably establish that he "owns" the land on which he was encroaching by placing his dog house. Jackie could have stopped Benjamin by demanding over those 21 years that he remove his doghouse, or sign a rental agreement to establish the use was by mutual consent. But Ohio courts will not allow Jackie to suddenly eject Benjamin after sitting on her rights for over two decades.

Another example - if your backyard fence includes some of your neighbor's property, and you maintain that land for a substantial amount of time (Ohio – 21 years), you may be able to claim it as your own.

Adverse possession in Ohio is regulated partly by statute, but largely by the state courts. The burden of proof to establish a claim of adverse possession is squarely on the trespasser.

As of 2020, Ohio does not have a law on the books defining the elements a trespasser must establish to prove adverse possession. Like many other states, Ohio uses four factors to determine the presence of adverse possession: hostile, actual, open and notorious, and exclusive and continuous.

This article doesn't allow for us to go into each element but rather is intended to give you a broad overview and to simply be aware as a homeowner. Please seek legal advice if a problem arises.

Thinking of Selling?
Don't think winter
will slow down –
Buyer demand is still
high and interest
rates remain low.

Sellers are getting
lots of interest and
strong offers.