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## ***The Hawaii Real Property Tax Act Applications for Withholding Certificate For Dispositions by Nonresident Persons***

As a general rule, every buyer/transferee of real property must withhold (7.25) percent of the "amount realized" (generally the sales price) and transmit that amount to the State Tax Department within 20 days after closing unless an exemption applies and the buyer/transferee receives proof of that exemption. It is not escrow's responsibility to withhold the amount, but does so as directed by the parties in the purchase contract. It is the seller's burden to prove that an exemption applies and to provide that proof to the buyer. A common exemption applies when the seller is a Hawaii "resident" as defined by Hawaii Revised Statutes (HRS) § 235-1.

Although escrow officers do not give legal or tax advice, understanding how the process that escrow officers follow in complying with withholding requirements, the forms that are used, and what must be provided before escrow can avoid the withholding can help avoid delays and frustrating situations. This flyer discusses the situation where a nonresident seller applies for a certificate for a reduction or waived withholding prior to closing.

- As a general rule, if escrow does not receive a properly completed N-289 to provide to the buyer before closing or an N-288B withholding certificate, escrow will withhold the appropriate amount from seller's proceeds and forward it to the State Tax Department.
- In some circumstances, the seller may obtain a withholding certificate from the State Tax Department wherein the State approves a waiver or reduction of the withholding amount because the seller shows that it will not recognize gain on the transfer or there will be insufficient proceeds to pay the withholding after payment of all costs, including payoffs.
- The application, Form N-288B, must be filed with the State Tax Department no later than 10 working days prior to closing and an application filed later than 10 days working days prior to the scheduled closing date will not be accepted. As a general rule, Escrow will withhold unless an approval for waiver or adjustment form is received from the State Tax Department prior to closing.
- Escrow does not complete the Form N-288B, and it is recommended that the seller work with a qualified attorney or tax advisor.
- Form N-288B instructs that if two or more non-resident transferors jointly transfer a Hawaii real property interest, a separate Form N-288B should be filed for each non-resident transferor/seller.

Copies of Form N-288B and accompanying Instructions are available at: [http://www.state.hi.us/tax/a1\\_forms.htm](http://www.state.hi.us/tax/a1_forms.htm)

**DISCLAIMER** - This flyer is for general informational purposes only, and should not be relied upon for any legal, business, economic, or tax decision. It is not intended to provide legal or business advice. Before making any decision regarding this matter, you should consult with a qualified advisor.