



CalDisclosures

Your source for the disclosure forms and booklets
required by the California Department of Real Estate

CAL DRE #00642780

[Editor's Note: The following excerpt is from the California Department of Real Estate's booklet "Disclosures in Real Property Transactions" Part I Transfer and Financing of Real Property, Section I Disclosures Required of a Seller and/or Real Estate Broker/Agent, I. Notice and Disclosure to Buyer of State Withholding on Disposition of California Real Property]

Notice and Disclosure to Buyer of State Withholding on Disposition of California Real Property

In certain California real estate sale transactions, buyers must withhold 3 1/3% of the total sales prices as state income tax and deliver the sums withheld to the State Franchise Tax Board. In applicable transactions, the escrow holder is required by law to notify the buyer of this responsibility.

A buyer's failure to withhold and deliver the required sum may result in the buyer being subject to penalties. If the escrow holder fails to notify the buyer, penalties may be levied against the escrow holder.

Transactions are exempt from withholding if:

- The **total** sales price is less than \$100,000.
- The property qualifies as the seller's or decedent's principal residence under Internal Revenue Service Code Section 121. Generally, a home will qualify as a principal residence if, during the five-year period ending on the date of sale, the seller or the decedent owned **and** lived in the property as their main home for at least two years. Notwithstanding the two-year requirement, the last use of the property must be that of the seller's or decedent's principal residence.
- The transaction must result in either a net loss or a net gain that is not required to be recognized for California income or franchise tax purposes. The seller must complete Form 593-L, "*Real Estate Withholding-Computation of Estimated Gain or Loss.*"

- The property is subject to an involuntary conversion and, therefore, the transaction will qualify for non-recognition of gain for California income tax purposes under Internal Revenue Service Code Section 1033.
- The property is being transferred by certain corporations, partnerships, or other entities which have no permanent place of business in California and/or otherwise qualify for an exemption.
- The property is being transferred by a trustee under a deed of trust or a mortgage with a power of sale, or pursuant to a decree of foreclosure, or by a deed in lieu of foreclosure.

There may be other restrictions, limitations, or exceptions for special circumstances. For more information, obtain IRS Publication 523, "*Selling Your Home*," at www.irs.gov, or contact the IRS toll free at 1-800-829-3676. In addition, withholding may be reduced or deferred when:

- The sale qualifies as an IRS Code Section 1031 exchange. However, withholding will be required on any cash the seller receives.
- The sale is an installment sale and the buyer agrees in writing to withhold on each principal payment including the down payment and on any balloon payment. The buyer must complete Form 593-I, "*Real Estate Withholding Installment Sale Agreement*."

For further information, contact the Franchise Tax Board and/or a qualified tax advisor.

(CAL. REV. & TAX. § 18662)