



**NAVI TITLE**  
AGENCY

# **FIRPTA**

THE FOREIGN INVESTMENT IN  
REAL PROPERTY TAX ACT OF 1980



# FIRPTA

## THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT OF 1980

### SUMMARY & PURPOSE:

Non-U.S. persons who sell real property in the United States, or U.S. persons who buy U.S. – based real property from non-U.S. persons, are subject to the Foreign Investment in Real Property Tax Act (FIRPTA).

Additionally, there are special reporting requirements if a foreign person buys U.S. real estate to rent it out.

### WHAT IS FIRPTA?

FIRPTA stands for “Foreign Investment in Real Property Tax Act”. It was enacted in 1980 and has two (2) primary components:

1. Anyone buying a U.S. – located property interest from a foreign seller must deduct and withhold a tax equal to 10% or 15% of the sales price.
2. The foreign seller is taxed as if they are engaged in a trade or business in the U.S.

### WITHHOLDING PERCENTAGE OF GROSS SALES PRICE ILLUSTRATIVE CHART

Buyer Intends to Use Property as a Residence?	Yes
Sales Price is \$300,000 or less	Exemption
Sales Price is greater than \$300,000 & not over \$1,000,000	10% withholding
Sales Price is over \$1,000,000	15% withholding

### WHO AND WHAT DOES FIRPTA APPLY TO:

FIRPTA applies to a foreign person (individual or business) selling or disposing of a U.S. interest in real property. If the property is jointly owned, both owners are subject to FIRPTA.

### WHEN DOES IT APPLY? WHAT FORMS ARE USED?

The withheld tax must be reported and remitted to the Internal Revenue Service (IRS) by the 20th day after the date of the transfer (typically the closing date). Form 8288, “U.S. Withholding Tax Return for Dispositions by Foreign Persons of Real Property Interest,” and Form 8288-A, “Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.” Are used for this purpose.



## WHO IS RESPONSIBLE FOR WITHHOLDING THE TAX?

The buyer of the property is responsible for meeting the withholding tax requirements. Joint buyers of property are each responsible for meeting the requirements.

## WHAT ARE THE PENALTIES IF TAX WAS NOT WITHHELD?

The person who is required to deduct and withhold the tax but fails to do so may be held liable for the payment of the tax and any applicable penalties and interest.

## WHAT ARE THE EXCEPTIONS TO THE WITHHOLDING REQUIREMENT?

There are four (4) common exceptions:

1. The transaction is exempt from withholding if the seller furnishes a statement to the buyer that the seller is not a foreign person. The buyer may rely on the seller's certification affirming unless there is knowledge that it is false (by the buyer or an agent of the buyer or seller). Certification that the seller is not a foreign person must be signed under penalties of perjury and set forth the seller's name, U.S. tax identifying number and home or office address.
2. The property is not sold but is transferred in a gift, inherited or transferred in certain other non-sale transactions.
3. A buyer will use the property as a residence AND the sale price is less than \$300,000. No FIRPTA withholding or reporting is required if the property is acquired for the buyer's use as a home and the sales price is less than \$300,000. The buyer must have definite plans to reside at the property for at least 50% of the number of days that the property is used by any person during each of the first two 12-month periods following the date of the transfer. This exemption does not apply if the buyer is other than an individual.
4. The "amount realized" by the seller is zero. REMEMBER: "amount realized" means more than cash proceeds received by the seller. It can also include the amount of any carryback note, the value of other property transferred or to be transferred to the seller, or the amount of any liability assumed by the buyer.

## HOW CAN ONE REDUCE OR ELIMINATE THE WITHHOLDING TAX?

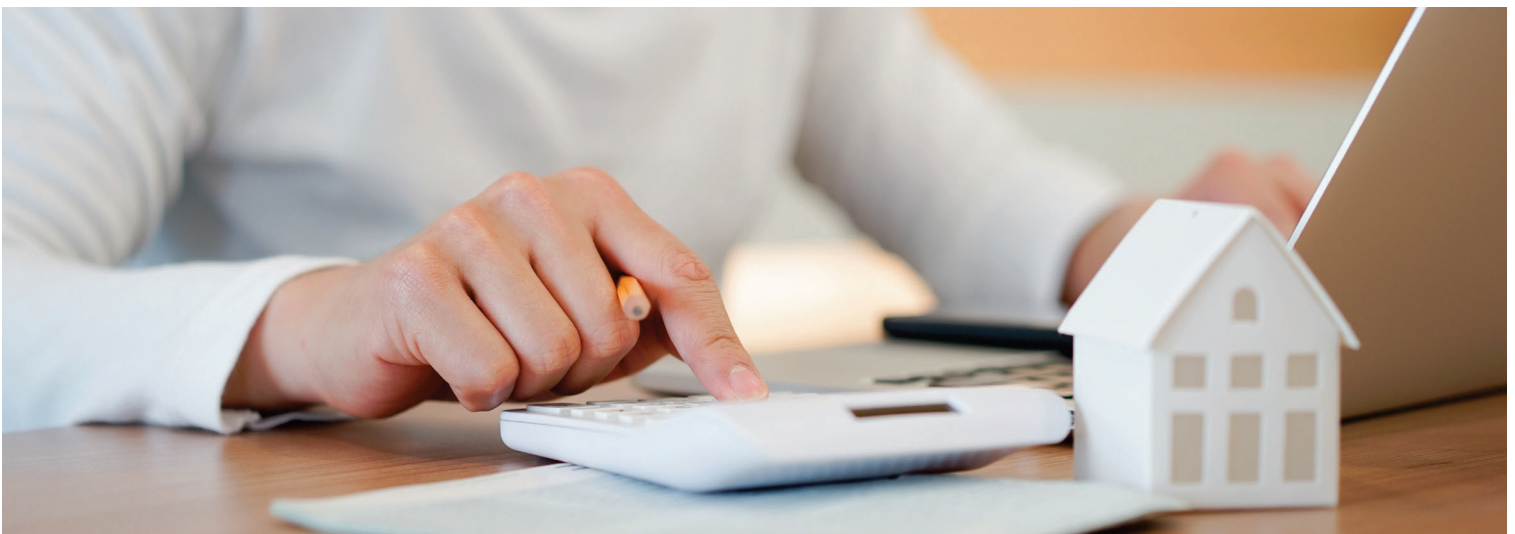
The primary way to do this is to prove to the IRS that the tax on any gain from selling the property will be less than the default withholding tax. This is done using the withholding certificate (Form 8288-B). An application for the withholding certificate must be mailed to the IRS prior to the closing date of the sale. If a withholding certificate is applied for the payment is delayed until a response is received from the IRS. If the withholding certificate is denied the payment is due within 20 days of the IRS response.

## WHO NEEDS TO FILE A TAX RETURN TO REPORT THE SALE?

Since FIRPTA rules treat the property seller as being engaged in a U.S. trade or business, a tax return must be filed reporting the sale proceeds, less the seller's cost basis in the property (including improvements) and any selling expenses. Any resulting gain will be taxed, and any withholding tax taken will be allowed as a refundable credit against tax assessed. It is important to note that large tax refunds may be obtained in the event 10 or 15% withholding tax was taken and the property sale resulted in a loss or a relatively small gain.

## WHAT WILL THE LEVEL OF INCOME TAX BE?

If property was held as a personal use home or as investment property, the gain usually will be taxed at rates currently ranging from 0% to 15%. If the property contained a rental operation, the gain usually will be taxed at rates currently ranging from 0% to 25%. It is important to note that sellers likely will use the assessed tax as a foreign tax credit on their country-of-residence tax return.



## ARE U.S. TAXPAYER IDENTIFICATION NUMBERS REQUIRED?

Yes. To be properly credited with the withholding tax or to apply for reduction / elimination of withholding, the seller(s) must obtain U.S. tax identification numbers. These numbers are also required to report the gain or loss – as well as any withholding tax – on a U.S. income tax return.

## WHAT ARE THE OTHER BENEFITS TO FILING A U.S. TAX RETURN IF ONE RENTS OUT U.S. REAL ESTATE?

Filing a return allows any rental losses to be carried forward to offset any future rental net income or gains from selling the property. If you also have a personally run business in the U.S., rental losses may offset income from that business. Filing a U.S. tax return also permits proper use of foreign tax credits and minimization of tax on a worldwide basis.

## WHAT IF ONE INTENDS TO PURCHASE U.S. REAL ESTATE SPECIFICALLY TO RENT IT OUT?

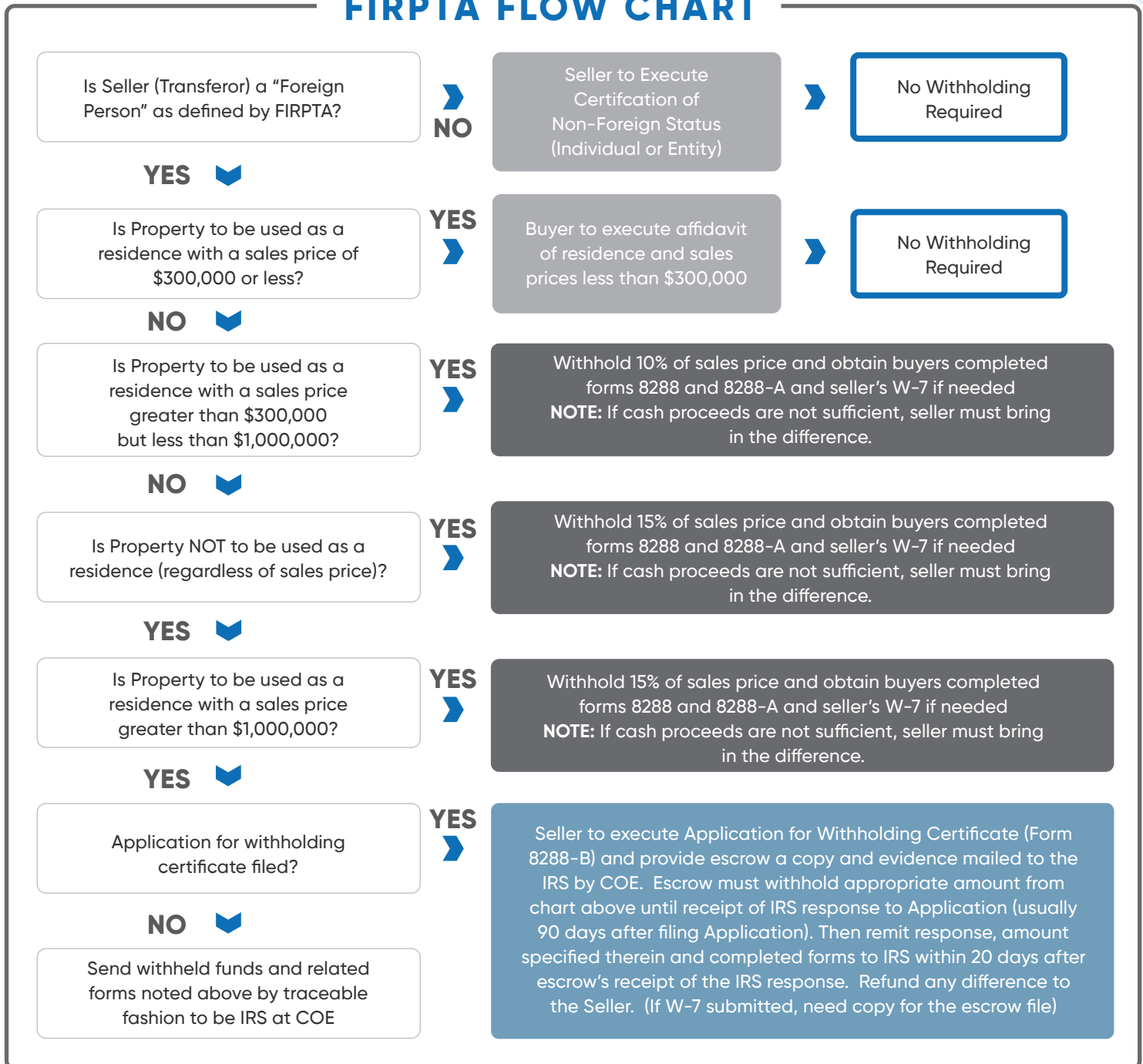
There are generally two (2) options:

1. Obtain a U.S. tax identification number and file annual U.S. income tax returns. The benefit of filing is that it will allow one to obtain deductions (e.g., interest, insurance, depreciation, repairs) to offset the rental income.
2. If annual U.S. tax returns are not filed, one must pay a 30% tax on gross basis (i.e., without the allowance of any deductions connected with the earning of rent income) to the IRS, without the possibility of a refund.

# FIRPTA

## IRS Section 1445 - Withholding Obligation of Buyer (Transferee)

### FIRPTA FLOW CHART



- \* "Foreign Person" means a non-resident alien individual or a foreign corporation/partnership/trust/estate. A resident alien is NOT a foreign person. (Resident aliens generally will have a green card or indicate they fall within the "substantial presence" test.)
- \*\* If the property is being acquired through foreclosure or deed-in-lieu, special withholding rules apply. Contact the Legal Department for further advice.
- \*\*\* If sending in a W-7, need to include branch address as mailing address & send package to W-7 IRS unit location (address on instructions to W-7 form). On receipt of SS#/TIN, complete form 1099-5.
- \*\*\*\* Escrow officers will need to calendar follow-ups with the seller and / or seller's accountant to:
  - 1) obtain SS# or TIN to complete 1099-S form, 2) obtain or inquire regarding status of Withholding Application..

**U.S. Withholding Tax Return for Dispositions by Foreign  
 Persons of U.S. Real Property Interests**

OMB No. 1545-0902

Go to [www.irs.gov/Form8288](http://www.irs.gov/Form8288) for instructions and the latest information.

If this is an amended return, check here

Complete Part I or Part II. Also complete and attach Copies A and B of Form(s) 8288-A.  
 Attach additional sheets if you need more space.

**Part I To Be Completed by the Buyer or Other Transferee Required To Withhold Under Section 1445(a)**

<b>1</b> Name of buyer or other transferee responsible for withholding. See instructions.	Identifying number
Street address, apt. or suite no., or rural route. Do not use a P.O. box.	
City or town, province or state, country, and ZIP or foreign postal code	Phone number (optional)
<b>2</b> Description and location of property acquired _____ _____ _____ _____ _____ _____ _____ _____	
<b>3</b> Date of transfer	<b>4</b> Number of Forms 8288-A attached
<b>5</b> Complete all items that apply. Enter dollar amounts on applicable lines. <b>a</b> Amount subject to withholding at 15% . . . . . <input type="checkbox"/> _____ <b>b</b> Amount subject to withholding at 10% . . . . . <input type="checkbox"/> _____ <b>c</b> Withholding is at a reduced rate. See instructions . . . . . <input type="checkbox"/> <input type="checkbox"/>	<b>6</b> Total amount withheld

**Part II To Be Completed by an Entity Subject to the Provisions of Section 1445(e)**

<b>1</b> Name of entity or fiduciary responsible for withholding. See instructions.	Identifying number
Street address, apt. or suite no., or rural route. Do not use a P.O. box.	
City or town, province or state, country, and ZIP or foreign postal code	Phone number (optional)
<b>2</b> Description of U.S. real property interest transferred or distributed _____ _____ _____ _____ _____ _____ _____ _____	
<b>3</b> Date of transfer	<b>4</b> Number of Forms 8288-A attached
<b>5</b> Complete all items that apply. Enter dollar amounts on applicable lines. <b>a</b> Amount subject to withholding at 15% . . . . . <input type="checkbox"/> _____ <b>b</b> Amount subject to withholding at 10% . . . . . <input type="checkbox"/> _____ <b>c</b> Amount subject to withholding at 21% . . . . . <input type="checkbox"/> _____ <b>d</b> Withholding is at a reduced rate. See instructions . . . . . <input type="checkbox"/> <input type="checkbox"/> <b>e</b> Large trust election to withhold at distribution . . . . . <input type="checkbox"/> <input type="checkbox"/>	<b>6</b> Total amount withheld

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

**Sign Here**  \_\_\_\_\_  
 Signature of withholding agent, partner, fiduciary, or corporate officer Title (if applicable) Date

<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name <input type="checkbox"/>		Firm's EIN <input type="checkbox"/>		
	Firm's address <input type="checkbox"/>		Phone no.		

## Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests

☒ **Please type or print.**

<b>1</b> Name of transferor (attach additional sheets if more than one transferor)	<b>Identification number</b>
Street address, apt. or suite no., or rural route. Do not use a P.O. box.	
City, state or province, and country (if not U.S.). Include ZIP code or postal code where appropriate.	
<b>2</b> Name of transferee (attach additional sheets if more than one transferee)	<b>Identification number</b>
Street address, apt. or suite no., or rural route. Do not use a P.O. box.	
City, state or province, and country (if not U.S.). Include ZIP code or postal code where appropriate.	
<b>3</b> Applicant is: Transferor <input type="checkbox"/> Transferee <input type="checkbox"/>	
<b>4a</b> Name of withholding agent (see instructions)	<b>b Identification number</b>
<b>c</b> Name of estate, trust, or entity (if applicable)	<b>d Identification number</b>
<b>5</b> Address where you want withholding certificate sent (street address, apt. or suite no., P.O. box, or rural route number)	Phone number (optional)
City, state or province, and country (if not U.S.). Include ZIP code or postal code where appropriate.	
<b>6</b> Description of U.S. real property transaction:	
<b>a</b> Date of transfer (month, day, year) (see inst.) _____	<b>b</b> Contract price \$ _____
<b>c</b> Type of interest transferred: <input type="checkbox"/> Real property <input type="checkbox"/> Associated personal property	<input type="checkbox"/> Domestic U.S. real property holding corporation
<b>d</b> Use of property at time of sale: <input type="checkbox"/> Rental or commercial <input type="checkbox"/> Personal <input type="checkbox"/> Other (attach explanation)	
<b>e</b> Adjusted basis \$ _____	
<b>f</b> Location and general description of property (for a real property interest), description (for associated personal property), or the class or type and amount of the interest (for an interest in a U.S. real property holding corporation). See instructions.	
-----	
<b>g</b> For the 3 preceding tax years:	
<b>(1)</b> Were U.S. income tax returns filed relating to the U.S. real property interest? . . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," when and where were those returns filed? ☒ _____	
<b>(2)</b> Were U.S. income taxes paid relating to the U.S. real property interest? . . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," enter the amount of tax paid for each year ☒ _____	
<b>7</b> Check the box to indicate the reason a withholding certificate should be issued. See the instructions for information that must be attached to Form 8288-B.	
<b>a</b> <input type="checkbox"/> The transferor is exempt from U.S. tax or nonrecognition treatment applies.	
<b>b</b> <input type="checkbox"/> The transferor's maximum tax liability is less than the tax required to be withheld.	
<b>c</b> <input type="checkbox"/> The special installment sales rules described in section 7 of Rev. Proc. 2000-35 allow reduced withholding.	
<b>8</b> Does the transferor have any unsatisfied withholding liability under section 1445? . . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No See the instructions for information required to be attached.	
<b>9</b> Is this application for a withholding certificate made under section 1445(e)? . . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," check the applicable box in <b>a</b> and the applicable box in <b>b</b> below.	
<b>a</b> Type of transaction: <input type="checkbox"/> 1445(e)(1) <input type="checkbox"/> 1445(e)(2) <input type="checkbox"/> 1445(e)(3) <input type="checkbox"/> 1445(e)(5) <input type="checkbox"/> 1445(e)(6)	
<b>b</b> Applicant is: <input type="checkbox"/> Taxpayer <input type="checkbox"/> Other person required to withhold. Specify your title (e.g., trustee) ☒ _____	

Under penalties of perjury, I declare that I have examined this application and accompanying attachments, and, to the best of my knowledge and belief, they are true, correct, and complete.

Signature	Title (if applicable)	Date
-----------	-----------------------	------



# NAVITITLE AGENCY

## 1 GLENDALE – CORPORATE

20325 N 51st Ave Bldg. 8 Ste 162  
Glendale, AZ 85308

**Tanya Banovac**  
Sr VP Escrow Officer  
623-267-2105  
tbanovac@navititle.com

**Linda Banovac**  
Escrow Admin  
lbanovac@navititle.com

**Stacey Bergacker**  
VP Escrow Officer  
623-267-2102  
sbergacker@navititle.com

## 2 ARROWHEAD NAVI TITLE

17235 N 75th Ave Ste B-150  
Glendale, AZ 85308

**Marisa Carrillo**  
VP Sr Escrow Officer  
623-624-6800  
mcarrillo@navititle.com

**Kendra Salazar**  
Unit Manager/Escrow Officer  
623-624-6800  
ksalazar@navititle.com

## 3 GILBERT NAVI TITLE

365 E. Germann Road Suite 270  
Gilbert, AZ 85297

**Katie Smith**  
VP Sr Escrow Officer  
480-581-7540  
ksmith@navititle.com

**Liz Stanek**  
Sr Escrow Officer  
480-581-7540  
lstanek@navititle.com

**Jay Miller**  
Escrow Officer  
480-581-7540  
jmiller@navititle.com

**Tara Curry**  
Escrow Officer  
480-581-7540  
tcurry@navititle.com

## 4 PEORIA NAVI TITLE

9059 W. Lake Pleasant Parkway Suite B-260  
Peoria, AZ 85382

**Jennifer Hostetler**  
Sr Escrow Officer  
623-887-5800  
jhostetler@navititle.com

**Karen Lewis**  
Sr Escrow Officer  
623-887-5800  
klewis@navititle.com

## 5 SCOTTSDALE NAVI TITLE

7047 E Greenway Pkwy Suite 190  
Scottsdale, AZ 85254

**Cathy Kinderknecht**  
Sr Escrow Officer  
480-944-5070  
ckinderknecht@navititle.com

## 6 SURPRISE NAVI TITLE

14239 W Bell Road Suite 115  
Surprise, AZ 85374

**Suzanne Langford**  
Branch Manager/Sr. Escrow Officer  
623-288-9800  
slangford@navititle.com

**Julie Hutton**  
Sr. Escrow Officer  
623-288-9800  
JHutton@navititle.com

**Katie Bisenius**  
Escrow Officer  
623-288-9800  
KBisenius@navititle.com

**Becki Cherivtch**  
Assistant Escrow Officer  
623-288-9800  
BCherivtch@navititle.com

