

# COLORADO 2% WITHHOLDING

## COLORADO CONVEYANCE OF REAL PROPERTY

All sales of real property in the State of Colorado over \$100,000.00 may be subject to a withholding tax in anticipation of Colorado income tax that will be due on gain from the sale. This applies to non-residents as of January 1, 1993 and there are few exceptions.

Individuals, estates, or trusts will be subject to the withholding if either the federal form 1099-S is to be filed with the IRS reporting the sale or an authorization for disbursement of sale proceeds confirms a non-Colorado address for the transferor. Corporate transfers will be subject to the withholding tax if immediately after the sale there is no permanent place of business for the entity in the state of Colorado. Corporations are deemed to have a permanent place of business in Colorado if they are a Colorado domestic corporation, they are qualified by law to transact business in Colorado, or if they maintain a staff and permanent office in the state.

Withholdings are made by the title insurance company or its authorized agent at closing and remitted to the State Department of Revenue. Also attorneys, banks, savings and loans, corporations, partnerships, joint stock company, trusts, unincorporated organization, or any entities providing closing and settlement services shall withhold the tax as applicable to the transaction. The amount withheld will be the lesser of two percent of the sales price of the interest in the property or the net proceeds that would otherwise be due to the seller as shown on the closing settlement statement.

### A WITHHOLDING WILL NOT BE MADE WHEN ANY OF THE FOLLOWING APPLY:

1. The selling price of the property is not more than \$100,000.00.
2. The transferor is an individual, estate or trust. Form 1099-S and an authorization for disbursement of funds must show a Colorado address for the transferor.
3. The transferee is a bank or corporate beneficiary under a mortgage or beneficiary under deed of trust and the Colorado real property is acquired through judicial or non-judicial foreclosure or by Deed in Lieu of foreclosure.
4. The transferor is a corporation under Colorado law or currently registered with the Secretary of State as authorized to transact business in Colorado.
5. The transferee is a partnership as defined in section 761(a) of the Internal Revenue Code required to file an annual federal return of income under section 6031(a) of the Internal Revenue Code.
6. The title company or entity providing closing and settlement services, in good faith, relies upon a written affirmation executed by the transferor, certifying under penalty of perjury any of the following:
  - A) That the transferor, if an individual, estate or trust, is a resident of Colorado;
  - B) That the transferor, if a corporation, has a permanent place of business in the State of Colorado;
  - C) That the Colorado real property being conveyed is the principal residence of the transferor which could qualify for the rollover of gains provisions of section 1034 of the Internal Revenue Code; or
  - D) That the transferor will not owe Colorado income tax reasonably estimated to be due from the inclusion of the actual gain required to be recognized on the transaction in the gross income of the transferor.

Normally, Colorado tax will be due on any transaction in which gain will be recognized for federal income tax purposes. Gain is typically recognized when the sales price of the real property exceeds the total of the taxpayer's adjusted basis in the property plus expenses incurred in the sale of the property. Adjusted basis normally identifies the total investment in the property minus any depreciation that was previously claimed for federal income tax purposes.



The title insurance company or other closing agent will have a Form DR 1083 completed with the closing transaction. This Form must be completed and submitted to the Colorado Department of Revenue if tax is withheld from the net proceeds of the sale, or if Colorado tax would have been withheld except for the signing of an affirmation by the transferor. If withholding is not made, the transferor must confirm one of the following in the signed affirmation:

- a. Affirmation of Colorado Residency
- b. Affirmation of Permanent Place of Business
- c. Affirmation of Principal Residence
- d. Affirmation of Partnership
- e. Affirmation of No Tax Reasonably Estimated to be Due or No Gain on Sale
- f. No Net Proceeds

When taxes are withheld, the title insurance company or other closing agent must submit the funds along with the completed Form DR 1083 and Form DR 1079 to the Colorado Department of Revenue no later than 30 days after the closing date of the transaction. Title companies or authorized agents required to withhold any amounts pursuant to the Colorado Regulatory Statute are subject to penalties if they fail to withhold any such amounts.

DR1083 (2013)  
 COLORADO DEPARTMENT OF REVENUE  
 1075 LEXINGTON STREET  
 DENVER, CO 80201

**INFORMATION WITH RESPECT TO A CONVEYANCE OF A COLORADO REAL PROPERTY INTEREST**

- Name(s) and address of transferor(s):  
 Forwarding Address: \_\_\_\_\_
- Transfer is (check one)  Individual  Estate  Trust  Corporation  Other (specify): \_\_\_\_\_
- Social Security Number(s) or Colorado account number of transferor
- Federal Employer Identification Number of transferor
- Type of property sold:
- Address or legal description of property sold:
- Date of Closing:
- Selling price of property: \$ \_\_\_\_\_
- Selling price of real property interest: \$ \_\_\_\_\_
- If Colorado tax was WITHHELD, check this box:
- Amount of Tax Withheld: \$ \_\_\_\_\_
- If withholding is not made, give reason (check one):
  - a. Affirmation of Colorado residency signed:
  - b. Affirmation of Permanent place of business signed:
  - c. Affirmation of principal residence signed:
  - d. Affirmation of partnership signed:
  - e. Affirmation of no tax reasonably estimated to be due or no gain on sale signed:
  - f. No net proceeds:
- Name, address, and telephone number of the title insurance company or other person providing closing and settlement services with respect to the transfer: \_\_\_\_\_

File this form together with form 1079, if applicable, within 30 days of the closing date with the  
 COLORADO DEPARTMENT OF REVENUE  
 1075 LEXINGTON STREET  
 DENVER, CO 80201

**AFFIRMATION OF COLORADO RESIDENCY**

I (check/they affirm that I am/we are) the transferor (s) or the fiduciary of the transferor of the property described on this Form 1083 and that as of the date of closing I am (we are) or the estate or the trust is a resident of the State of Colorado.

Signed under the penalty of perjury: \_\_\_\_\_  
 Signature of transferor or fiduciary: \_\_\_\_\_ Date: \_\_\_\_\_  
 Return Federal Employer Identification Number: \_\_\_\_\_ Date: \_\_\_\_\_

**AFFIRMATION OF PERMANENT PLACE OF BUSINESS**

I hereby affirm that the transferor of the property described on this Form 1083 is a corporation which maintains a permanent place of business in Colorado.

Signed under the penalty of perjury: \_\_\_\_\_  
 Signature of representative: \_\_\_\_\_ Date: \_\_\_\_\_

**AFFIRMATION OF SALE BY PARTNERSHIP**

I hereby affirm that the transferor of property described on this Form 1083 was sold by and organization defined as a partnership under section 501 (c) (3) of the Internal Revenue Code and required to file an annual federal partnership return of income under section 501 (a) of the Internal Revenue Code.

Signed under the penalty of perjury: \_\_\_\_\_  
 Signature of representative: \_\_\_\_\_ Date: \_\_\_\_\_

**AFFIRMATION OF PRINCIPAL RESIDENCE**

I (check/they affirm that I am/we are) the transferor (s) of the property described on this Form 1083 and immediately prior to the transfer I was (we were) the principal residence which would qualify for the full use of gain provision of section 121 of the Internal Revenue Code.

Signed under the penalty of perjury: \_\_\_\_\_  
 Signature of transferor: \_\_\_\_\_ Date: \_\_\_\_\_  
 Return Federal Employer Identification Number: \_\_\_\_\_ Date: \_\_\_\_\_

**AFFIRMATION OF NO REASONABLY ESTIMATED TAX TO BE DUE**

I (check/they affirm that I am/we are) the transferor (s) or an officer of the corporate transferor or fiduciary of the transferor of the property described on this Form 1083, and I (we) and I (we) affirm that I (we) will be in a Colorado residence for no reasonably estimated to be due or no gain on sale on the date of the transfer.

Please understand before you sign this affirmation that nonresidents of Colorado are subject to Colorado tax on gains from the sale of Colorado real estate to the extent such gains are taxable under applicable income tax laws.

Signed under the penalty of perjury: \_\_\_\_\_  
 Signature of transferor, officer or fiduciary: \_\_\_\_\_ Date: \_\_\_\_\_  
 Return Federal Employer Identification Number: \_\_\_\_\_ Date: \_\_\_\_\_

For a copy of complete instructions for this form, contact your local Guardian Title office or refer to PDF contained in the link below from the Colorado Division of Real Estate:

[tax.colorado.gov/sites/tax/files/DR1083\\_2013.pdf](http://tax.colorado.gov/sites/tax/files/DR1083_2013.pdf)