



FOREIGN INVESTOR GUIDE

Buying or Selling Property
in Hawaii as a Foreign Investor

oldrepublictitle.com/hawaii

Why Old Republic Title?

When you select a title insurer, you've chosen a company you can rely on as long as you or your heirs own a property. Old Republic Title's value doesn't just come from being in business for more than a century. It's much more than that.

At Old Republic Title, you'll find exceptional customer service every step of the way. Through each stage of the process, you'll work with experienced title insurance professionals who strive to provide prompt delivery of our products and services.

How do we know you'll work with experienced professionals? We keep our standards high. Whether it's state or regional counsel, title officers, title searchers, underwriters or escrow officers, we recruit individuals with knowledge and skill in the title insurance and real estate industries—many of whom build long careers with Old Republic Title.

Our products and services are designed to protect our customers associated with a real estate transaction. Whether you're a homeowner, title agent, real estate professional, builder or lender, we provide solutions to meet your needs. We take the mystery out of the complex settlement process by providing advanced technology solutions that meet high compliance standards.

The value of our services is backed by financial strength that is unsurpassed in the title insurance industry. Since 1992, no other title insurer has had higher overall ratings than Old Republic Title. By carefully considering each financial step we take, we make every effort to ensure we'll be here to serve you for many years to come.

What is Escrow?

Making a very large purchase, such as a house, causes buyers, sellers and lenders to seek reassurance about all the security measures that are in place to protect the funds involved in the closing transaction. Transferring large sums of money and finalizing the details of your sale needs to be done safely and in compliance with the latest security and privacy standards. To help minimize risks during real estate transactions, the escrow/settlement process was developed to protect the buyer, seller and lender.

An escrow account is basically a temporary pass through account held by the escrow holder. The escrow holder is a neutral third party that holds funds and related documents in a secure manner while the parties work through the details of the real estate transaction. Escrow ensures the conditions of the real estate transaction have been met before the property and/or money change hands.

How Does Escrow Work?

The escrow process starts when a party to a real estate transaction (seller, seller's agent, buyer or buyer's agent) opens the escrow after a written sale agreement is reached. Upon opening, the escrow holder should be provided with the terms of the sale and the information necessary to carry out tasks. The escrow holder's duties and the timing of key tasks vary between states.

While your real estate transaction is in escrow, your escrow officer and agent will work with you to make sure the right steps are taken at the right time. Tasks that the escrow holder may complete include:

- Coordinating communications between all parties in the transaction
- Preparing written escrow instructions
- Requesting a preliminary report or commitment
- Requesting a statement of identity (information) from the buyer or seller as needed
- Ordering demands or beneficiary statements
- Receiving bills from home warranty companies, as well as pest, roof, home and other inspection companies
- Preparing or securing the deed or other recordable documents
- Complying with lender's requirements
- Prorating taxes, interest, insurance and rents
- Receiving purchase funds required for closing
- Coordinating recording of deeds and any other necessary documents
- Closing escrow when all the instructions of the buyer, seller and lender have been carried out
- Disbursing funds as authorized, including charges for title insurance, recording fees, real estate commissions and loan payoffs
- Preparing final statements for the parties, which account for the disposition of all funds deposited in escrow

When all instructions in escrow have been carried out to the satisfaction of each party, the escrow is ready to be closed. With closing, the title to the property is transferred to the buyer, the sales proceeds are paid over to the seller, necessary documents are recorded and title insurance is issued. It is important to note that the escrow holder does not offer legal advice, negotiate the transaction or offer investment advice.

What is Title Insurance and How Does It Work?

To put it simply, title insurance is a way to protect yourself from financial loss and related legal expenses in the event there is a defect in title to your property that is covered by the policy. Title insurance differs from other types of insurance in that it focuses on risk prevention, rather than risk assumption. With title insurance, title examiners review the history of your property and seek to eliminate title issues before the purchase occurs. Title insurance also differs in that it comes with no monthly payment. It's just a one-time premium paid at closing.

Do I need Title Insurance?

Absolutely. Title insurance is a way to protect what is likely your largest investment—your home. An Owner's Policy provides peace of mind that your title company will stand behind you if a covered title issue or defect arises after you have bought your home.

What Does Title Insurance Cover?

Any number of title issues may arise, even after the most meticulous search of public records. These hidden defects are dangerous because you might not learn about them for months, or even years, after purchase. Some common examples of risks covered by your Owner's Policy include defects in title caused by:

- Improper execution of documents
- Mistakes in recording or indexing legal documents
- Forgeries and fraud
- Undisclosed or missing heirs
- Unpaid taxes and assessments
- Unpaid judgments and liens
- Unreleased mortgages
- Mental incompetence of grantors on the deed
- Impersonation of the true owners of the land by fraudulent persons
- Refusal of a potential purchaser to accept title based on the condition of the title

How Much Does Title Insurance Cost?

The one-time premium that you'll pay for a title insurance policy varies by state, but generally is related to the value of your property. You can use our Rate Calculator to estimate how much your title insurance policy may cost.

What's Owner's Title Insurance?

An Owner's Title Policy is designed to protect you from covered title defects that existed prior to the issue date of your policy. If a valid claim is filed, your Owner's Policy, subject to its terms and conditions, will cover financial loss up to the face amount of your policy.

What's Lender's Title Insurance?

A Lender's Policy provides no coverage to the homeowner. A Lender's Policy insures that your lender has a valid, enforceable lien on your property. Most lenders require borrowers to purchase this type of insurance policy to protect their investment.

AVOID ESCROW PITFALLS



Will any of these situations affect your transaction?

- Are your principals exchanging this property?
- Will your principals be using a power of attorney?
- Are any of the parties on title deceased?
- Has there been a change of marital status?
- Do any of the parties signing NOT have a photo ID or Driver's License?
- Will there be a new entity formed (e.g. Partnership or Corporation)?
- Have any of the principals recently filed bankruptcy?
- Are the sellers of this property not residents of the State of Hawaii?
- Are any of the principals minors?

**If you answered "yes" to any of these questions,
please contact your escrow officer.**

HARPTA - The Hawaii Real Property Tax Act (1990) which says that a sale of Hawaii Real Estate by a Non-Hawaii resident is subject to a Hawaii State Tax. The tax liability belongs to the seller, and 7.25% of the total sales price will be withheld and submitted to the State of Hawaii Department of Taxation.

There are some exemptions from this withholding:

- Hawaii Resident (Must fill out form N-289, which is provided to seller in opening instructions)
- Foreign corporations and partnerships which are registered to do business in the state of Hawaii (Must fill out form N-289, which is provided to seller in opening instructions)
- Property used as principal residence for year prior to the sale and sales price does not exceed \$300,000

For more information on these taxes, please call the appropriate departments or visit their website.

HARPTA - State of Hawaii Department of Taxation:

Oahu 808.587.4242

Maui 808.984.8500

Kauai 808.274.3456

Big Island-Hilo 808.974.6321

or visit www.hawaii.gov/tax

FIRPTA - Internal Revenue Service

www.irs.gov and search for FIRPTA

FIRPTA - Under current federal law, if a foreign person sells US real property, the buyer is obligated to withhold 10% of the gross sales price and remit this to the IRS. However, pursuant to the Protecting Americans from Tax Hikes Act of 2015, which became law on December 18, 2015 (the "PATH Act") **the required 10% withholding will increase to 15% for all closings occurring on or after February 17, 2016**, except those wherein the sales price is greater than \$300,000 and does not exceed \$1,000,000 and the buyer acquires the property for use as a personal residence. Under the circumstance, a reduced withholding of 10% will apply.

Sales Price \$300,000 or less and the buyer acquires as personal residence	No Withholding
Sales Price more than \$300,000 but not more than \$1,000,000 and the buyer acquires as personal residence	10% Withholding
All transactions - Any Sales Price and the buyer NOT acquiring as personal residence	15% Withholding

In short, **if a foreign person is selling a US real property interest, the following parameters apply UNLESS THERE IS AN EXCEPTION FROM WITHHOLDING:**

No withholding is required under the following circumstances:

- Buyer acquires for use as a personal residence and sales price not more than \$300,000.
- Seller provides Non-Foreign Affidavit
- Seller provides a Withholding Certificate from the IRS which excuses the withholding
- The amount realized by the seller is zero
- The property is acquired by the United States or a political subdivision thereof



BUYER VS. SELLER COSTS

Standard Allocation of Closing Fees

BUYER COST

40% of the premium for standard coverage title insurance and any additional cost relating to the issuance of extended coverage policy

50 % of Escrow Fee

Lender's Policy

Cost of obtaining Buyer's consent

Buyer's notary fees

Cost of of drafting mortgage or agreement of sale

All recording fees except documents relating to clear Seller's title

Condominium and Association ownership transfer fee

FHA or VA discount points and any mortgage fees

SELLER COST

60% of the premium for standard coverage title insurance

50% of Escrow Fee

Cost of drafting conveyance documents and bill of sale

Cost of obtaining Seller's consent

Seller's notary fees

Cost of required staking or survey

Recording fees to clear Seller's title

Cost of required Condominium and Association documents

FHA or VA mandatory closing fees

Cost of required termite inspection report

Conveyance Tax

FIRPTA (Federal Withholding Tax)

HARPTA (State Withholding Tax)

Visit www.oldrepublictitle.com/hawaii and use our Online Netsheets tool to calculate your estimated fees

Foreign Investment in Real Property Tax Act of 1980 and Section 1031 Exchanges-2016 Update

What is the definition of “foreign person” under FIRPTA?

FIRPTA defines a “foreign person” as a non-resident alien individual, a foreign corporation that has not made an election under section 897(i) of the Internal Revenue Code to be treated as a domestic corporation, a foreign partnership, a foreign trust, or a foreign estate. The term “foreign person” does not include a resident alien individual.

Who is required to withhold and remit the withholding to the IRS?

The buyer/transferee and certain agents of the buyer are responsible for withholding the required amount.

How and when is the withholding paid?

The tax must be reported and paid using IRS Form 8288, which must be filed with the IRS by the 20th day after the date of the transfer.

For a comprehensive list of the exceptions, see the following IRS link:

<https://www.irs.gov/Individuals/International-Taxpayers/Exceptions-from-FIRPTA-Withholding>

What is a notice of non-recognition?

A notice of non-recognition is a written notice given by the seller to the buyer stating that no recognition of any gain or loss on the transfer is required because of a non-recognition provision in the Internal Revenue Code – e.g. IRS section 1031 – or a provision in a U.S. tax treaty. The buyer is required to file a copy of the notice with the IRS by the 20th day after the date of transfer. The notice must contain the seller’s TIN. There is no promulgated form for this notice.

A buyer is personally liable under FIRPTA if there is ultimately any actual tax liability to the seller resulting from the sale. The IRS can assess the full withholding amount or the seller’s actual tax liability on the sale, whichever is less, plus interest and penalties. Thus, a buyer should never close a sale in reliance on a notice of non-recognition transaction except on the advice of a CPA, attorney, or other tax advisor because personal

liability can result from reliance on an improper notice of non-recognition.

How does the seller obtain a Withholding Certificate?

A transferor looking to reduce or eliminate the FIRPTA withholding amount must file a Form 8288-B, “Application for Withholding Certificate for Disposition by Foreign Persons of U.S. Real Property”. A transferor who does not have a TIN/SSN must apply for a TIN/SSN (via W-7 form), preferably well ahead of closing.

How does withholding affect a seller’s 1031 exchange?

A seller in a 1031 exchange may use proceeds only to pay necessary expenses of sale or for the purchase of replacement property. Amounts expended for other items will be taxable. Thus, it is important for foreign sellers to recognize that using proceeds to pay the FIRPTA has a taxable consequence because FIRPTA is not considered a necessary expense of sale. To avoid this result, sellers should bring in cash to the closing agent to pay for the FIRPTA withholding, thus allowing all proceeds generated by the sale to be used in the exchange.

Choose Old Republic Exchange to handle your next exchange. We have offices nationwide to serve you and/or your client’s exchange needs.



Withholding Certificate & Tax Identification Number

What if the seller applies for a Withholding Certificate to excuse withholding and the application is still pending at the time of the disposition?

If an application for a Withholding Certificate is submitted to the IRS on or before the date of a transfer and the application is still pending on the date of transfer, the withholding tax must be withheld.

A Taxpayer Identification Number (TIN) is an identification number used by the Internal Revenue Service (IRS) in the administration of tax laws. A Social Security number (SSN) is issued by the SSA whereas all other TINs are issued by the IRS.

Examples of Taxpayer Identification Numbers:

Social Security Number "SSN"

Employer Identification Number "EIN"

Individual Taxpayer Identification Number "ITIN"

Do You Need a Tax Identification Number (TIN)?

A TIN must be furnished on returns, statements, and other tax related documents.

Types of Taxpayer Identification Numbers (TINs):

SSN

You will need to complete Form SS-5, Application for a Social Security Card (PDF). You also must submit evidence of your identity, age, and U.S. citizenship or lawful alien status. For more information please see the Social Security web site. Form SS-5 is also available by calling 1-800-772-1213 or visiting your local Social Security office. These services are free.

EIN

An Employer Identification Number (EIN) is also known as a federal tax identification number, and is used to identify a business entity. Refer to Employer ID Numbers for more information.

ITIN

An ITIN, or Individual Taxpayer Identification Number, is a tax processing number only available for certain nonresident and resident aliens, their spouses, and dependents who cannot get a Social Security Number (SSN). It is a 9-digit number, beginning with the number "9", formatted like an SSN (NNN-NN-NNNN). To obtain an ITIN, you must complete IRS Form W-7, IRS Application for Individual Taxpayer Identification Number (PDF).

Common Ways to Hold Title in Hawaii

	TENANT IN SEVERALTY	TENANCY IN COMMON	JOINT TENANCY	TENANTS BY THE ENTIRETY
Definition	Property held by one person, severed from all others.	Property held by 2 or more persons, with no right of survivorship.	Property held by 2 or more individuals (not corporations, partnerships, etc.) with right of survivorship.	Property held by spouses, with rights of survivorship.
Creation	Any transfer to one person.	By express act; also by failure to express the tenancy.	Express intention plus 4 unities of time, title, interest and possession (with statutory exception).	Express intention, only spouses. Divorce automatically results in tenants in common.
Possession	Total.	Equal right of possession.	Equal right of possession.	Equal right of possession.
Title	One title to one entity.	Each co-owner has a separate legal title to his undivided interest, will be equal interests unless expressly made unequal.	One title to the whole property since each tenant is theoretically deemed owner of whole; must be equal undivided interests.	One title in the marital unit.
Conveyance	No restrictions (check for release of marital rights, if any).	Each co-owner's interest may be conveyed separately by its owner; purchaser becomes tenant in common.	Conveyance of one co-owner's interest breaks his tenancy; purchaser becomes tenant in common.	Cannot convey without consent of spouse.
Effect of Death	Entire property subject to probate and included in gross estate for federal and state death taxes.	Decedent's fractional interest subject to probate and included in gross estate for federal and state death taxes. The property passes by will to devisees or heirs, who take as tenants in common. No survivorship rights.	No probate and can't be disposed of by will; property automatically belongs to surviving co-tenants (last one holds in severalty). Entire property included in decedent's gross estate for federal estate tax purposes minus % attributable to survivor's contribution.	Right of survivorship so no probate. Same death taxes as joint tenancy.
Creditor's Rights	Subject to creditor claims.	Co-owner's fractional interest may be sold to satisfy his creditor who then becomes tenant in common.	Joint tenant's interest also subject to execution sale. Joint tenancy is broken and purchaser becomes tenant in common. Creditor gets nothing if debtor dies before sale.	Only a creditor of both spouses can execute on property.
Presumed By Law	None.	Favored in doubtful cases; presumed to be equal interests.	Not favored so must be expressly stated.	Must be expressly stated.

REAL PROPERTY TAX RATES

Fiscal Year Beginning July 1, 2020 through June 30, 2021. Rates listed are per \$1,000 of net taxable assessed valuation for the fiscal year July 1, 2020 through June 30, 2021.

HONOLULU County

PROPERTY CLASS	TAXABLE BUILDING PER/\$1,000
RESIDENTIAL	\$3.50
HOTEL AND RESORT	\$13.90
COMMERCIAL	\$12.40
INDUSTRIAL	\$12.40
AGRICULTURAL	\$5.70
PRESERVATION	\$5.70
PUBLIC SERVICE	\$0.00
VACANT AGRICULTURAL	\$8.50
RESIDENTIAL A: TIER 1 - 1st \$1M value	\$4.50
RESIDENTIAL A: TIER 2 - In Excess of \$1M	\$10.50
BED AND BREAKFAST HOME	\$6.50

MAUI County

PROPERTY CLASS		New Tiered-Rated System:	
		TIER 1:	Up to \$800,000
		TIER 2:	\$800,001 to \$1,500,000
		TIER 3:	More than \$1,500,000
OWNER OCCUPIED		Tier 1: \$2.51 Tier 2: \$2.56 Tier 3: \$2.61	
NON-OWNER OCCUPIED		Tier 1: \$5.45 Tier 2: \$6.05 Tier 3: \$6.90	
APARTMENT		\$5.55	
COMMERCIAL		\$6.29 (For all 3 Tiers)	
INDUSTRIAL		\$7.20	
AGRICULTURAL		\$5.94	
CONSERVATION		\$6.43	
HOTEL & RESORT		\$10.70	
TIMESHARE		\$14.40	
SHORT-TERM RENTAL		\$11.08 (For all 3 Tiers)	
COMMERCIALIZED RESIDENTIAL		\$4.40	

KAUAI County

PROPERTY CLASS	TAXABLE BUILDING PER/\$1,000
HOMESTEAD	\$3.05
RESIDENTIAL	\$6.05
RESIDENTIAL INVESTOR	\$9.40
VACATION RENTAL	\$9.85
HOTEL & RESORT	\$10.85
COMMERCIAL	\$8.10
COMMERCIALIZED HOME USE	\$5.05
INDUSTRIAL	\$8.10
AGRICULTURAL	\$6.75
CONSERVATION	\$6.75

HAWAII County

PROPERTY CLASS	TAXABLE BUILDING PER/\$1,000	TAXABLE LAND PER/ \$1,000
AFFORDABLE RENTAL HOUSING	\$6.15	\$6.15
RESIDENTIAL		
*PORTION VALUED LESS THAN \$2 MILLION	\$11.10	\$11.10
*PORTION VALUED AT \$2 MILLION AND MORE	\$13.60	\$13.60
APARTMENT	\$11.70	\$11.70
COMMERCIAL	\$10.70	\$10.70
INDUSTRIAL	\$10.70	\$10.70
AGRICULTURAL & NATIVE FOREST	\$9.35	\$9.35
CONSERVATION	\$11.55	\$11.55
HOTEL & RESORT	\$11.55	\$11.55
HOMEOWNER	\$6.15	\$6.15

HAWAII STATE: CONVEYANCE TAX RATES

If Purchase price is:	Rate if Purchaser IS eligible for homeowner's exemption	Rate if Purchaser IS NOT eligible for homeowner's exemption
Less than \$600,000	\$.10 per \$100 of Purchase Price	\$.15 per \$100 of Purchase Price
\$600,000 or more but less than \$1,000,000	\$.20 per \$100 of Purchase Price	\$.25 per \$100 of Purchase Price
\$1,000,000 or more but less than \$2,000,000	\$.30 per \$100 of Purchase Price	\$.40 per \$100 of Purchase Price
\$2,000,000 or more but less than \$4,000,000	\$.50 per \$100 of Purchase Price	\$.60 per \$100 of Purchase Price
\$4,000,000 or more but less than \$6,000,000	\$.70 per \$100 of Purchase Price	\$.85 per \$100 of Purchase Price
\$6,000,000 but less than \$10,000,000	\$.90 per \$100 of Purchase Price	\$1.10 per \$100 of Purchase Price
\$10,000,000 or more	\$1.00 of Purchase Price	\$1.25 per \$100 of Purchase Price

Old Republic Title's Financial Strength and Stability

Maintaining a strong financial position is core to Old Republic Title's strategy for success. Since 1992, no other title insurer has had higher overall ratings than Old Republic Title.* These financial strength and stability ratings reflect the Company's strong operating performance over the long run, excellent capitalization and liquidity, as well as sound investment and reserving policies. Old Republic Title Insurance Group and its member underwriters have been assigned the following financial ratings:



Our parent company, Old Republic International Corporation (ORI), is among the nation's 50 largest publicly held insurance organizations. It has consolidated assets of approximately \$19.45 billion (as of June 30, 2018). Since 1923, ORI has grown as a specialty insurance business and has one of the industry's best records as a long-term growth company. As a result, it serves many of America's leading industrial and financial services companies.

* Old Republic Title's underwriters are Old Republic National Title Insurance Company and American Guaranty Title Insurance Company. Ratings as of 10/18. Rating determinations made by rating agencies are subject to change. While the Company attempts to show accurate information, it cannot assure the reliability of ratings referred to herein and assumes no obligation to monitor the ratings of any rating agency or to immediately incorporate any rating changes applicable to the Company.

Notes

MAIN OFFICE

737 Bishop Street, Suite 2200, Honolulu, HI 96813
Phone 808.566.0100 • Fax 866.745.8396
Toll Free 877.566.6671
Escrow Department Fax 866.745.2085
Title Department Fax 866.715.8396
Property Information Dept. Fax 808.566.0224

COMMERCIAL / SPECIAL PROJECTS

700 Bishop Street, Suite 509
Honolulu, Hawaii 96813
Tel: 808.275.2500
eFax: 808.356.1919

KAILUA, OAHU

151 Hekili St. #201
Kailua, HI 96734
Phone 808.266.0150
Fax 866.745.2040
Toll Free 877.566.6670

KAHALA, OAHU

4211 Waialae Ave. #8040
Honolulu, HI 96816
Phone 808.733.0261
Fax 866.748.7013
Toll Free 800.598.0395

KAHULUI, MAUI

33 Lono Ave. #195
Kahului, HI 96732
Phone 808.871.2800
Fax 866.755.9069
Toll Free 866.783.2800

LAHAINA, MAUI

40 Kupuohi St., #103
Lahaina, HI 96761
Phone 808.661.1999
Fax 866.745.2363
Toll Free 877.665.6535

KAPA'A, KAUAI

4-356 Kuhio Hwy. #140
Kapa'a, HI 96746
Phone 808.821.6808
Fax 866.749.0445
Toll Free 800.598.0390

KAILUA-KONA, BIG ISLAND

75-5722 Kuakini Hwy. #215
Kona, HI 96740
Phone 808.327.3700
Fax 866.745.2082

OLD REPUBLIC NATIONAL TITLE

Timeshare/Fractional Interest Services
Phone 808.522.0356 • Fax 808.522.0355

OREXCO 1031 EXCHANGE

Phone 808.524.6737 • Toll Free 877.591.1031 •
Fax 866.250.8530

PEARLRIDGE, OAHU

98-211 Pali Momi Street
Suite 102
Aiea, HI 96701
Phone 808.488.5511
E-fax 808.748.0267

KAPOLEI, OAHU

James Campbell Building
1001 Kamokila Blvd. #130
Kapolei, HI 96707
Phone 808.693.7250
Fax 866.745.1936

WALEA, MAUI

34 Wailea Gateway Pl. #A201
Wailea, HI 96753
Phone 808.875-9110
Fax 866.698.9870
Toll Free 855.241.8383

KOLOA, KAUAI

3176 Poipu Rd. Unit 3
Koloa, HI 96756
Phone 808.742.1494
Fax 808.356.0385

06/2020
Old Republic Title is providing this information as a
free customer service and makes no warranties or
representations as to its accuracy.

Old Republic Title strongly recommends that
consumers confer with their title insurer as
underwriting requirements vary among companies
and further, obtain guidance and advice from qualified
professionals, including attorneys specializing in Real
Property, Trusts and/or Title Insurance to get more
detailed, and current, information as to any particular
situation affecting them.



OLD REPUBLIC INSURANCE GROUP