



## First American Title

**Foreign Buyers Guide**  
to Purchasing Real Estate  
in California



*First American Title™*





# Title Insurance

## What is “title?”

As it relates to real estate, “title” refers to the ownership rights to a certain piece of property.

## What is title insurance?

Title insurance is an insurance policy that protects property owners and their lenders against losses related to the property’s title or ownership. Title insurance minimizes the risk of acquiring property whose legal history is unknown to the purchaser.

Title insurance is issued for a **one-time fee, called a premium**, usually due at the time of closing or settling a real estate transaction, and is based on the price of the property. Title insurance coverage lasts as long as the insured or their heirs hold title to the property.

## What are the different types of title insurance?

There are two types of title insurance:

- ▼ **An owner’s title insurance policy guarantees that the buyer has the right to the property. It usually covers the cost of any legal fees that may arise when defending a claim.**
- ▼ **A lender’s title insurance policy protects a bank or other lending institution issuing a mortgage from any losses resulting from disputes over property ownership. This policy covers the amount of the loan, and the premium is calculated based on that amount. Most lenders require this coverage. Unlike an owner’s policy, this coverage ends when the mortgage is paid.**
- ▼ **Examples of the many risks against which title insurance can protect a buyer are:**
  - ▶ Forged documents
  - ▶ Fraud
  - ▶ Confusion from similarity of names
  - ▶ Liens existing against the property at the time the policy was issued
  - ▶ Clerical errors in public records
  - ▶ Inaccurate or conflicting wills and trusts related to the title
  - ▶ Missing heirs claiming to own the property



# Explanation of the Preliminary Title Report

This explanation may help you understand the contents of the preliminary title report you receive from First American Title.

## Part 1

This is the information submitted to our title department by the escrow officer. It contains the basic information given to us by the buyer or real estate agent such as the legal description of the property, sale price, loan amount, lender, name and marital status of buyer and seller.

## Part 2

Part 2 contains items that are tied to the subject property. These include Covenants, Conditions and Restrictions (CC&Rs), easements, homeowner's association by-laws, leases and other items which will remain of record and transfer with the property. They are referred to as "exceptions" because the buyer will receive a clear title "except" the buyer's rights will be subject to conditions in the CC&Rs, recorded easements, etc.

### Additional Items

These are items that First American needs to delete and/or record in order to provide a clear title to the property. Items that need to be addressed may include:

- ▼ **Current property-tax status,**
- ▼ **Any assessments that are owed such as those for a homeowners association,**
- ▼ **Any encumbrances (or liens) on the property.**

Sometimes items show up against a property because another person has a name similar to an involved party. This is one of the reasons that you are asked to fill out an Identity Statement; to determine if items may be inaccurate and can be deleted.

# The Importance of Title Insurance



## *Your First American Title Insurance Policy protects you against potential defects such as:*

1. Forged deeds, mortgages, satisfactions, or releases
2. Deed by person who is mentally incompetent
3. Deed by person in a foreign country, vulnerable to challenge as incompetent, unauthorized, or defective under foreign laws
4. Deed challenged as being given under fraud, undue influence or duress
5. Deed signed by mistake (grantor did not know what was signed)
6. Deed executed under falsified power of attorney
7. Undisclosed divorce of one who conveys as sole heir of a deceased former spouse
8. Deed affecting property of deceased person, not joining all heirs
9. Deed recorded but not properly indexed so as to be locatable in the land records
10. Undisclosed but recorded federal or state tax lien
11. Undisclosed but recorded judgment or spousal/child support lien
12. Undisclosed but recorded prior mortgage
13. Undisclosed but recorded boundary, party wall, or setback agreements
14. Misinterpretation of wills, deeds, and other instruments
15. Discovery of later will after probate of first will
16. Erroneous or inadequate legal descriptions
17. Deed to land without a right of access to a public street or road
18. Forged notarization or witness acknowledgment
19. Deed not properly recorded (wrong county, missing pages or other contents, or without required payment)
20. Deed to a purchaser from one who has previously sold or leased the same land to a third party under an unrecorded contract, where the third party is in possession of the premises

**An Owner's Title Insurance Policy is your best protection against potential defects that can remain hidden despite the most thorough search of public records. A Lender's Title Insurance Policy also exists to protect your mortgage lender's interest.**

You don't want a problem that occurred long before you bought your property to deprive you of ownership or your right to use or dispose of it.

And you don't want to pay the potentially high cost of defending your property rights in court.

For a **one-time premium**, First American agrees to reimburse you for covered losses suffered due to undetected defects that existed prior to the issue date of your First American policy, up to the amount of the policy.

Unless specifically excluded, your First American Title Insurance Policy also provides for legal defense costs.



# Understanding “Escrow” and its Importance to you

**An escrow is an independent, neutral intermediary that manages the exchange of money for real property.**

Whether you are the buyer, seller, lender, or borrower, you want the comfort of knowing that no funds or property will change hands until all of the instructions in the transaction have been followed and conditions met. The escrow holder, while maintaining the privacy of the consumer, must safeguard the funds and documents while they are in the possession of the escrow holder. When all conditions of the escrow transaction have been met and the parties agree, the escrow holder will disburse funds and record the documents conveying the title.

## Escrow: How does it work?

Once the parties to the transaction (buyer/seller/lender and/or borrower) have reached an agreement, the signed contract or purchase agreement, along with the buyer's **earnest money deposit**, is submitted to the escrow holder. At that point, an escrow is opened. The escrow holder will now follow the mutual written instructions of the buyer and seller, maintaining a neutral stance to facilitate the successful exchange of money and property between the parties. The escrow holder will also follow the instructions of the lender in meeting their conditions.

## The duties of an escrow holder include, but are not limited to:

- ▼ The processing and coordination of the flow of documents and funds
- ▼ Ordering the title search which will indicate the record of ownership and status of the subject property
- ▼ Responding to lender's requirements
- ▼ Responding to authorized requests from parties to the transaction
- ▼ Preparation of a final statement for each party (often referred to as the HUD-1 or Settlement Statement), that shows the costs and charges associated with the transaction
- ▼ Facilitation of the signing of loan documents
- ▼ Closing of the escrow, only when all conditions are met and funds are in place in accordance with instructions



# What Happens At First American?

During the escrow period, our title department begins researching and examining all historical records pertaining to the subject property. Barring any unusual circumstances, a preliminary report for title insurance is issued, which indicates a clear title or lists any items which must be cleared prior to closing. The preliminary title report is sent to you for review.

## *Consider This*

One escrow transaction could involve over twenty individuals including real estate agents, buyers, sellers, attorneys, escrow officer, escrow assistant, appraiser, title officer, loan officer, loan processor, loan underwriter, home inspector, termite inspector, insurance agent, home warranty representative, contractor, roofer, plumber, pool service, and so on. In addition, often times one transaction may also depend on the successful close of another sale.

When you consider the number of people involved, you can imagine the opportunities for challenges, miscommunications and delays.



## Your transaction may include the following steps:

**OPEN** escrow and deliver earnest money deposit to be held in a separate escrow account.

**CONDUCT** a title search to determine ownership and status of the subject property.

**ISSUE** a preliminary title report and begin the process to delete or record items to provide clear title to the property.

If applicable, **REQUEST** payoff information for the seller's loans, other liens, homeowners association fees, etc.

**PRORATE FEES**, if applicable, and prepare the Settlement Statement.

**SET** separate appointments for buyer and seller in order to sign documents and deposit funds (if applicable).

**REVIEW** documents to confirm that all conditions and legal requirements are fulfilled; request funds from lender.

When all funds are deposited, **RECORD** documents at the County Recorder to transfer the subject property to you.

After recordation is confirmed, **CLOSE** escrow and disburse funds, including seller's proceeds, loan payoffs, real estate agent's commission, related fees for recording, etc.

**PREPARE** and send final documents and accounting to parties involved.



# The Buyer Should Know:

## IDENTITY STATEMENT

You may be asked to fill out an Identity Statement that enables our title department to distinguish you from others with identical names during our search of County records. It also provides basic information that will be useful for your escrow officer.

## HOME LOAN

Unless you are paying cash, assuming a loan, or the seller is financing, you will need to apply for a home loan if you have not already done so. Apply as soon as possible to comply with the purchase contract and to avoid delaying the closing.

## RESPONSE TO SELLER'S NOTICES

If directed by the contract, you may receive the following items, among others, which require a response from you.

- a. Seller's Property Disclosure Statement listing any existing problems known to the seller.
- b. Information pertaining to the Home Owners Association (HOA) or Planned Unit Development (PUD), such as Covenants, Conditions and Restrictions (CC&Rs), if applicable.
- c. Flood Hazard Disclosure if the property is in a flood area.
- d. Independent inspections, such as those for termites, septic tank, etc.

## GOOD FUNDS

**Foreign Checks:** First American Title does not accept foreign checks into escrow. This includes foreign checks paid through a US Bank. All money coming from outside the United States must be sent via wire transfer.

**Third Party Checks:** First American Title does not accept any third party checks. These include any check drawn on a non-financial institution account or payable to a payee other than First American Title and subsequently endorsed to First American Title.

All funds deposited in escrow should be in the form of wires or cashier's checks. Any funds deposited to close escrow should be in the form of a wire to prevent any delays in closing. Cash is not acceptable for safety and security reasons.

# Ways to take title in California

## How To Hold Title?

You should inform your escrow officer and lender as soon as possible of how you wish to hold title to your home and exactly how your name(s) will appear on all documents. This allows your lender and title company to prepare all documents correctly. (Changes later, such as adding or deleting an initial in your name, can delay your closing.) You may wish to consult an attorney, accountant or other professional before deciding how to hold title.

	TENANCY IN COMMON	JOINT TENANCY	COMMUNITY PROPERTY	COMMUNITY PROPERTY with Right of Survivorship
Parties	Two or more persons <sup>1</sup>	Two or more natural persons	Spouses or domestic partners <sup>2</sup>	Spouses or domestic partners <sup>2</sup>
Division	Ownership can be divided into any number of interests, equal or unequal	Ownership interests must be equal	Ownership interests must be equal	Ownership interests must be equal
Creation	One or more conveyances (law presumes interests are equal if not otherwise specified)	Single conveyances (creating identical interests); vesting must specify joint tenancy	Presumption from marriage or domestic partnership or can be designated in deed	Single conveyance and spouses or domestic partners must indicate consent which can be on deed
Possession and control	Equal	Equal	Equal	Equal
Transferability	Each co-owner may transfer or mortgage their interest separately	Each co-owner may transfer his/her interest separately but tenancy in common results	Both spouses or domestic partners must consent to transfer or mortgage	Both spouses or domestic partners must consent to transfer or mortgage
Liens against one owner	Unless married or domestic partners, co-owner's interest not subject to liens of other debtor/owner but forced sale can occur	Co-owner's interest not subject to liens of other debtor/owner but forced sale can occur if prior to co-owner's/debtor's death	Entire property may be subject to forced sale to satisfy debt of either spouse or domestic partner	Entire property subject to forced sale to satisfy debt of either spouse or domestic partner
Death of co-owner	Decedent's interest passes to his/her devisees or heirs by will or intestacy	Decedent's interest automatically passes to surviving joint tenant ("Right of Survivorship")	Decedent's 1/2 interest passes to surviving spouse or domestic partner unless otherwise devised by will	Decedent's 1/2 interest automatically passes to surviving spouse or domestic partner due to right of survivorship
Possible advantages/disadvantages	Co-owners interests may be separately transferable <sup>3</sup>	Right of Survivorship (avoids probate); may have tax disadvantages for spouses	Qualified survivorship rights; mutual consent required for transfer; surviving spouse or domestic partner may have tax advantage <sup>2</sup>	Right of survivorship; mutual consent required for transfer; surviving spouse or domestic partner may have tax advantage

1. "Persons includes a natural person as well as validly formed cooperation, limited partnership, limited liability company or general partnership. Trust property is vested in the trustee (usually a natural person or corporation).

2. Transfers by spouses/domestic partners may require a quitclaim deed from the other spouse/partner for title insurance purposes.

3. If co-Owners are spouses/domestic partners, property may be subject to legal presumption of "community property" requiring consent of both spouses/partners to convey or encumber title notwithstanding vesting as "joint tenancy"

THIS IS PROVIDED FOR GENERAL INFORMATION ONLY. FOR SPECIFIC QUESTIONS OR FINANCIAL, TAX OR ESTATE PLANNING GUIDANCE, WE SUGGEST YOU CONTACT AN ATTORNEY OR CERTIFIED PUBLIC ACCOUNTANT.



# Buying A Home as a Foreign Buyer *And How FIRPTA Applies*

## FIRPTA - Foreign Investment in Real Property Tax Act

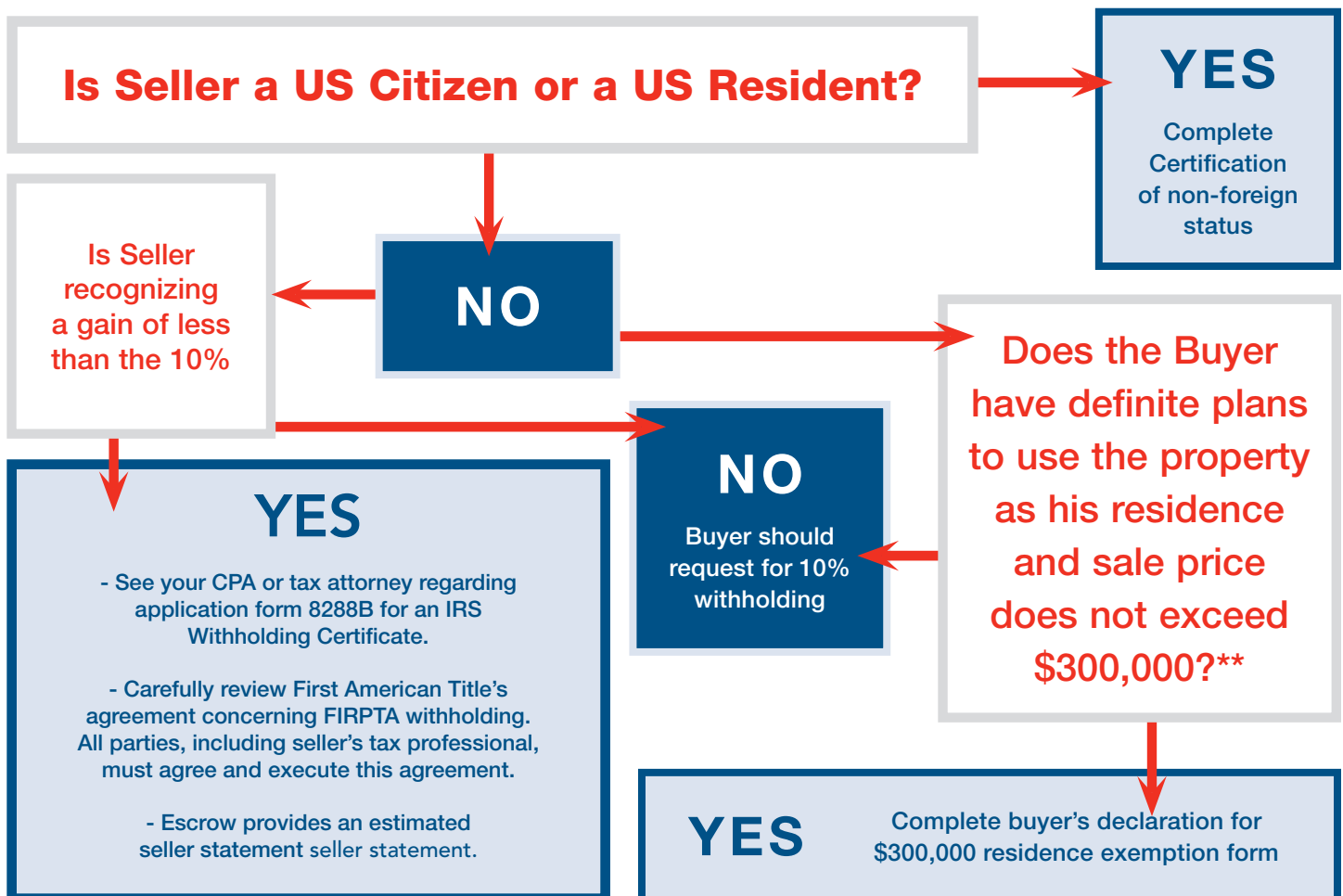
- ▼ **When a foreign owner gets ready to sell, they could be subject to a 10% withholding (of the Sales Price) unless the transaction is exempt from FIRPTA.**
  - ▶ Most common exemption: Sales Price is not more than \$300K. The buyer or a member of their family must have plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two twelve month periods after sale.
- ▼ **Other Exemptions that may apply are:**
  - ▶ Seller to provide a certificate showing they are not a foreign seller
  - ▶ Seller receives a withholding certificate from IRS excusing withholding or reducing withholding

*If applicable see forms:*

**W-7** (application for IRS Individual Taxpayer Identification Number)

**8288-B** (Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests)

Go to [www.irs.gov](http://www.irs.gov) and click on Forms and Publications to get copies of these and other forms.



**\*NOTE:** Escrow will withhold and remit to the IRS 10% pending receipt of Withholding Certificate, unless the parties agree otherwise.

**\*\*IRC REQUIRES:** The BUYER acquires the property for use as a home and the amount realized (sales price) is not more than \$300,000. The BUYER or a member of their family must have definite plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. When counting the number of days the property is used, do not count the days the property will be vacant

# Application for IRS Individual Taxpayer Identification Number

► For use by individuals who are not U.S. citizens or permanent residents.  
 ► See instructions.

OMB No. 1545-0074

An IRS individual taxpayer identification number (ITIN) is for federal tax purposes only.

FOR IRS USE ONLY			

**Before you begin:**

- Do not submit this form if you have, or are eligible to get, a U.S. social security number (SSN).
- Getting an ITIN does not change your immigration status or your right to work in the United States and does not make you eligible for the earned income credit.

**Reason you are submitting Form W-7.** Read the instructions for the box you check. **Caution:** If you check box b, c, d, e, f, or g, you must file a tax return with Form W-7 unless you meet one of the exceptions (see instructions).

- a  Nonresident alien required to get ITIN to claim tax treaty benefit
- b  Nonresident alien filing a U.S. tax return
- c  U.S. resident alien (based on days present in the United States) filing a U.S. tax return
- d  Dependent of U.S. citizen/resident alien } Enter name and SSN/ITIN of U.S. citizen/resident alien (see instructions) ► \_\_\_\_\_
- e  Spouse of U.S. citizen/resident alien } \_\_\_\_\_
- f  Nonresident alien student, professor, or researcher filing a U.S. tax return or claiming an exception
- g  Dependent/spouse of a nonresident alien holding a U.S. visa
- h  Other (see instructions) ► \_\_\_\_\_

Additional information for a and f: Enter treaty country ► \_\_\_\_\_ and treaty article number ► \_\_\_\_\_

<b>Name</b> (see instructions) Name at birth if different . . . ►	<b>1a</b> First name	Middle name	Last name
	<b>1b</b> First name	Middle name	Last name

**2** Street address, apartment number, or rural route number. **If you have a P.O. box, see separate instructions.**

City or town, state or province, and country. Include ZIP code or postal code where appropriate.

**3** Street address, apartment number, or rural route number. **Do not use a P.O. box number.**

City or town, state or province, and country. Include ZIP code or postal code where appropriate.

**4** Date of birth (month / day / year)    Country of birth    City and state or province (optional)    **5**  Male  
 Female

**6a** Country(ies) of citizenship    **6b** Foreign tax I.D. number (if any)    **6c** Type of U.S. visa (if any), number, and expiration date

**6d** Identification document(s) submitted (see instructions)     Passport     Driver's license/State I.D.  
 USCIS documentation     Other \_\_\_\_\_    Date of entry into the United States (MM/DD/YYYY)    / /

Issued by:    No.:    Exp. date: / /

**6e** Have you previously received a U.S. temporary taxpayer identification number (TIN) or employer identification number (EIN)?  
 **No/Do not know.** Skip line 6f.  
 **Yes.** Complete line 6f. If more than one, list on a sheet and attach to this form (see instructions).

**6f** Enter: TIN or EIN ► \_\_\_\_\_ and Name under which it was issued ► \_\_\_\_\_

**6g** Name of college/university or company (see instructions) \_\_\_\_\_ Length of stay \_\_\_\_\_  
 City and state

**Sign Here**  
 Under penalties of perjury, I (applicant/delegate/acceptance agent) declare that I have examined this application, including accompanying documentation and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I authorize the IRS to disclose to my acceptance agent returns or return information necessary to resolve matters regarding the assignment of my IRS individual taxpayer identification number (ITIN), including any previously assigned taxpayer identifying number.

Keep a copy for your records.	Signature of applicant (if delegate, see instructions)	Date (month / day / year)	Phone number
	Name of delegate, if applicable (type or print)	Delegate's relationship to applicant	<input type="checkbox"/> Parent <input type="checkbox"/> Court-appointed guardian <input type="checkbox"/> Power of Attorney

**Acceptance Agent's Use ONLY**

Signature	Date (month / day / year)	Phone
Name and title (type or print)	Name of company	Fax
		EIN
		Office Code

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

Department of the Treasury  
Internal Revenue Service

▶ 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.	

**6 Description of U.S. real property transaction:**

**a** Date of transfer (month, day, year) (see inst.) ..... **b** Contract price \$ .....

**c** Type of interest transferred:     Real property                       Associated personal property  
     Domestic U.S. real property holding corporation

**d** Use of property at time of sale:     Rental or commercial                       Personal                       Other (attach explanation)

**e** Adjusted basis \$ .....

**f** 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.  
 .....  
 .....

**g** For the 3 preceding tax years:

**(1)** Were U.S. income tax returns filed relating to the U.S. real property interest? . . . . .  Yes     No  
 If "Yes," when and where were those returns filed? ▶ .....

**(2)** Were U.S. income taxes paid relating to the U.S. real property interest? . . . . .  Yes     No  
 If "Yes," enter the amount of tax paid for each year ▶ .....

**7** 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.

**a**  The transferor is exempt from U.S. tax or nonrecognition treatment applies.  
**b**  The transferor's maximum tax liability is less than the tax required to be withheld.  
**c**  The special installment sales rules described in section 7 of Rev. Proc. 2000-35 allow reduced withholding.

**8** Does the transferor have any unsatisfied withholding liability under section 1445? . . . . .  Yes     No  
 See the instructions for information required to be attached.

**9** Is this application for a withholding certificate made under section 1445(e)? . . . . .  Yes     No  
 If "Yes," check the applicable box in **a** and the applicable box in **b** below.

**a** Type of transaction:     1445(e)(1)     1445(e)(2)     1445(e)(3)     1445(e)(5)     1445(e)(6)  
**b** Applicant is:                       Taxpayer     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
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***First American Title***<sup>™</sup>

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