



Colorado Non-Resident Tax Withholding (aka, the 2% tax)

There can be a lot of confusion about whether a title company will require non-resident withholding at time closing from a seller. This withholding requirement can either be 2% of the sales price OR all of the net proceeds from the sale, whichever is less. Sometimes a seller will make little to no proceeds, so in this case, the latter option is typically chosen. This tax is paid to the Colorado Department of Revenue where it will be credited to the seller's income tax account as an estimated tax payment.

At time of closing/settlement, the seller must fill out a form called the DR1083, also known as the Respect to a Conveyance of a Colorado Real Property Interest form. This form will determine "if" withholding is required from that seller's proceeds by the affirmations they sign on page two. By signing the affirmations, the seller assumes responsibility for complying with state income tax laws.

Typically, the following individuals are not subject to Non-Resident withholding:

- Sellers who are Colorado residents selling their property
- Seller is a government agency
- Seller is a corporation that is incorporated under Colorado law or is currently registered with the Secretary of State's office as qualified to transact business in Colorado.
- Seller is an individual, estate, trust, partner or partnership and both the federal form 1099S and the authorization, if any, for disbursement of funds from the sale show the seller as having a Colorado address.
- The transferee (buyer) of the property is a bank or corporate beneficiary under a mortgage/deed of trust and the property was acquired by foreclosure or by a deed in lieu of foreclosure.

Note: What if someone has recently relocated to another state, but they are selling their property and it is their primary residence? In this case, on page two, they can sign the affirmation of their primary residence immediately prior to the transfer but the DR1083 should be completed and submitted w/out the payment and is the seller's responsibility. This form is provided to all sellers, along with their 1099-S form at closing in the closing package.

When the non-resident withholding tax is required to be withheld, the Title Company/Settlement agent will submit a DR1079 within 30 days of closing to the Colorado Department of Revenue along with the payment that was debited from the seller at time of closing. The seller's social security number and name will be noted on the form.

For more detailed information, visit the Colorado Department of Revenue Taxpayer service division at:
<https://tax.colorado.gov>.