

FEDERAL STANDARD ABSTRACT

TITLE NEWS

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1099-S Reporting of Real Estate Transactions

Generally real estate transactions must be reported to the IRS. This article provides guidance as to what transactions are reportable and by whom. This article is a summary of applicable laws and regulations as they apply to our local real industry.

a. Reportable Transactions

The sale or exchange of an ownership interest in real estate must be reported by filing of IRS form 1099-S. "Sale or exchange" follows the same definition as for income tax purposes. Generally, a transfer for money, property, services, or indebtedness is a "sale or exchange." A transfer for no consideration is not. Involuntary transfer or conversions (e.g. eminent domain or specific performance under a contract of sale) are considered a "sale or exchange."

"Real estate" includes land, buildings, condominium units, cooperative units, and development rights. An "ownership interest" includes fee simple interests, life estates, reversions, remainders and easements. It also includes leases if the term acquired is for at least 30 years, measured from the date of closing. For example, the purchase of 99 year ground lease where there are only 25 years left to run is not reportable, but if the remaining

term is 35 years, then it is reportable. Options to purchase real estate are not considered ownership interests.

b. Who Must File

The party taking responsibility for preparing the HUD-1 Settlement Statement is charged with filing the 1099-S. If there is no HUD-1, the responsibility falls in the following order:

1. the purchaser's attorney;
2. the seller's attorney;
3. a third party escrowee which releases funds for the purchase (which may be the title company), if applicable;
4. the mortgage lender;
5. the transferor's broker;
6. the transferee's broker; and
7. the transferee.

Transferor and transferee may designate by agreement any one of the first four parties in this list as the party taking responsibility for the filing. The party so designated must also join in the agreement. No separate fee may be charged for filing the 1099-S, but the filing may be considered in the pricing of overall closing fees.

c. Exceptions

A sale that qualifies under IRC §121 exemption does not need to be reported.

The exemption applies to sales of homes for \$250,000 or less which have been used by the seller as a primary residence for two of the last five years. If the seller is a married couple, the exemption amount is \$500,000 or less. However, in order to qualify for the filing exception, the settlement agent must receive a certification from the seller assuring that the seller fully qualifies for the 121 exemption. The settlement agent may not rely on such a certification if it has any knowledge that the information in the seller's certification may not be correct.

Transactions where the transferor is a corporation or a governmental unit are not reportable. For LLCs, the transaction is reportable, unless the LLC has elected to file its income taxes as a corporation. Where there are multiple transferors, one 1099-S must be filed per non-exempt transferor, except in the case of partnerships and married couples where one 1099-S suffices.

Transactions by "volume transferors" are also excepted from filing. A "volume transferor" is a party who within the last two years sold 25 units of real estate for sale or resale, or expects to sell 25 units within the current year. However, the seller claiming exemption must issue a certification to the settlement agent supporting the exception.

Transfers in full or partial satisfaction of a debt secured by the property are not reportable. Lastly, transactions in amounts not exceeding \$600 are considered de minimis and not reportable either.

d. Useful Links

1099-s Form: <http://www.irs.gov/pub/irs-pdf/f1099s.pdf>

Instructions: <http://www.irs.gov/pub/irs-pdf/i1099s.pdf>

Sample Seller's Certification: http://www.irs.gov/irb/2007-04_IRB/ar09.html

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