

UNDERSTANDING REQUIRED REPORTING TO THE IRS

Sellers of real property will have certain information regarding the sale reported to the Internal Revenue Service. This required reporting of information is a consequence of the Tax Reform Act of 1986; it is intended to encourage taxpayer compliance with the Internal Revenue Code and aid in audit and enforcement efforts by the I.R.S.

To help you better understand this subject, the California Land Title Association has answered some of the questions most commonly asked about required reporting to the I.R.S.

Who is required to report to the I.R.S.?

Sellers of real property, under guidelines established by the I.R.S., are required to have the dollar amount of their gross proceeds from the sale reported on a Form 1099S. When a settlement agent is used, the I.R.S. makes the settlement agent responsible for the delivery of the seller's gross proceeds information on the Form 1099S.

The settlement agent generally will be the escrow agent or title company; however, it may be an attorney, real estate broker or other person providing settlement services.

What is an I.R.S. Form 1099S; and what will be reported?

The Form 1099S is the reporting form adopted by the I.R.S. for submitting the seller's gross proceeds information required by law.

The information is transferred onto magnetic media by the settlement agent who will make the required report to the I.R.S. The settlement agent is also required to keep a master copy of all transactions reported for a length of four years from the date of transaction.

In general, information required by the I.R.S. falls into the following categories:

1. The name, address and taxpayer ID number (social security or tax identification number, often called the ("TIN") of the seller(s))
2. A general description of the property (in most cases an address)
3. The closing date of the transaction
4. The gross proceeds of the transaction (even though gross proceeds do not correspond to taxable income)
5. Any property involved as part of the transaction other than cash or cash equivalent
6. The name, address and taxpayer identification number of the settlement agent
7. Real estate tax paid in advance that is allocable to the buyer.

UNDERSTANDING REQUIRED REPORTING TO THE IRS

Currently, typical homeowner transactions covered include sales and exchanges of 1-4 family residential properties such as houses and condominiums. Also reportable are sales or exchanges of improved or unimproved land, commercial or industrial buildings, condominiums, stock in a cooperative housing corporation and mobile homes (manufactured homes) affixed to real property.

Specifically excluded from reporting are (a) foreclosures (b) abandonments of real property and (c) financings or refinancings of properties. Additionally, a 1099S is not required for the sale or exchange of a principal residence with gross proceeds of \$250,000 or less (\$500,000 or less for married filing jointly) if an acceptable written assurance (certification) from the seller is obtained that indicates the full gain is excludable from the seller's gross income.

What happens if the seller(s) refuses to provide the taxpayer identification number for the Form 1099S?

The settlement agent is required to request the transferor's taxpayer identification number(s) (TIN(s)) before the time of closing. You may request a TIN on Form W-9 or use an alternative written request. The IRS has included sample wording of an alternative written request in the instructions for preparation of Form 1099S.

Should the seller fail to provide the identification number and certify its correctness, the settlement agent may choose to:

1. Delay the closing of the transactions until the information is furnished, or
2. Complete the transaction and report to the I.R.S. that an attempt was made to obtain the information from the seller.

How is the sale reported when there is more than one seller involved or when multiple sellers do not own equal interests in the property?

Multiple sellers may allocate the gross proceeds among themselves for purposes of reporting. If there is no allocation, an incomplete allocation or conflicting allocations, then the entire gross proceeds will be reported for each seller.