

What is IRS Form 1099-S and Why is it Important for Real Estate Transactions?

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What is IRS Form 1099-S?

Internal Revenue Service (IRS) Form 1099-S is used to report gross proceeds from the sale of real estate (and certain other transactions). As a general matter, if real estate is sold, then the sale is to be reported to the IRS through the filing of Form 1099-S (subject to certain exceptions, exclusions and qualifications as set forth in the instructions on the IRS [website](#)¹). This would include, among other things, the sale of the following:

- Improved or unimproved land, including air space.
- Permanent structures, including any residential, commercial, or industrial building.
- A condominium unit and its fixtures and common elements, including land.
- Stock in a cooperative housing corporation.

The date by which Form 1099-S must be filed is determined by the IRS on an annual basis, so it is important to monitor the relevant IRS publications with respect to each applicable reporting year. For example, per the IRS [website](#), forms relating to reportable transactions for calendar year 2024 must be filed with the IRS by February 28, 2025 (or March 31, 2025 if e-filing).

Why is it important to file this form?

The IRS may impose penalties for each failure to file, and such penalties may be subject to interest. These penalties vary and depend on various factors, including, among other things, when the form is ultimately filed and the number of reportable transactions that were not timely reported.² Note that these penalties and interest are separate from any penalties and or interest that may be due on underlying unpaid taxes.

Who is responsible for filing the form?

Generally, the person responsible for “closing” a reportable transaction is required to file Form 1099-S. However, determining who is responsible for “closing” the transaction can differ depending on the specific facts of the transaction. Below is a brief overview of who may be responsible for filing in connection with a sale of real estate; the complete instructions can be found at the IRS’s [website](#).

¹ These exceptions, exclusions and qualifications are fact-specific and should be consulted in the context of a specific transaction.

² See the following link for additional details on penalties: <https://www.irs.gov/payments/information-return-penalties>

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1. If a Closing Disclosure prescribed under the Dodd-Frank Wall Street Reform and Consumer Protection is used and a person is listed as the settlement agent on the Closing Disclosure, then such person is responsible for closing the transaction and filing the form.
2. If paragraph 1 above doesn't apply, then the person responsible for closing the transaction is the person who also prepares a Closing Disclosure that (a) identifies the seller and purchaser, (b) identifies the real estate transferred, and (c) describes how the proceeds are to be (or were) disbursed. For many commercial real estate transactions, this would refer to the settlement statement (or closing statement) that is often prepared by the title company handling the closing.
3. If no Closing Disclosure is used (or if more than one is used), the person responsible for closing the transaction is, in the following order: (a) the purchaser's attorney who is present at the delivery of the note or a significant part of the cash proceeds to the seller, or who prepares or reviews the preparation of the documents transferring ownership; (b) the seller's attorney who is present at the delivery of the note or a significant part of the cash proceeds to the seller, or who prepares or reviews the preparation of the documents transferring ownership; or (c) the title or escrow company that is most significant in disbursing the gross proceeds. If there is more than one attorney described in (a) or (b), the one whose involvement is most significant is the person considered responsible for closing the transaction.
4. For real estate transactions where no one is responsible for closing the transaction as set forth above, the person responsible for filing is, in the following order: (a) the mortgage lender, (b) the seller's broker, (c) the purchaser's broker, or (d) the purchaser³.
5. Finally, a person can be designated as the responsible person for filing through a written designation agreement. The designated person can be the person responsible for closing the transaction as set forth in the above paragraphs, the seller's or purchaser's attorney, the title or escrow company that is most significant in disbursing gross proceeds, or the mortgage lender. The designation agreement may be in any written form and may be included on the Closing Disclosure. It must:
 - Identify by name and address the person designated as responsible for filing;
 - Include the names and addresses of each person entering into the agreement;
 - Be signed and dated by all persons entering into the agreement;
 - Include the names and addresses of the seller and purchaser; and
 - Include the address and any other information necessary to identify the property.

Note that in the case of sales and acquisitions of commercial real estate, the sale and purchase agreement for the subject transaction will sometimes designate the title company or escrow agent as the person responsible for filing.⁴

³ See the instructions on the IRS [website](#) for further details and specific definitions of the terms used in this section.

⁴ The person responsible for filing Form 1099-S must also furnish a statement to the seller; see the "Real estate transactions" Section of the IRS [website](#) for additional details on this requirement.

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What information should be included on the form?

Form 1099-S provides for certain information to be reported in the filing, which includes (but is not limited to) the following:

- The filer's name, address, phone number, and tax identification number or social security number;
- The seller's name, address, phone number, and tax identification number or social security number;
- The address of the transferred property;
- The date of closing;
- The gross proceeds of the sale;
- Whether the seller received or will receive property (other than cash and consideration treated as cash in figuring gross proceeds) or services as part of the consideration for the property;
- Whether the seller is a foreign person (e.g., nonresident alien, foreign partnership, foreign estate, or foreign trust); and
- For certain real estate transactions involving a residence, the amount of real estate tax paid in advance that is allocable to the purchaser.

Note that for transactions where the title company or escrow agent is responsible for filing, they will often ask the seller to complete a worksheet or other instrument that sets forth the relevant information required for Form 1099-S. The title company or escrow agent will then use this information to file the form itself.

Additional information on Form 1099-S, including a link to the form itself, can be found [here](#).

This article is for informational purposes only and should not be construed as legal advice because, among other things, it does not take into consideration specific facts of any particular transaction or situation. If you have any questions about its content or about issues specific to your concerns, please contact one of the authors listed above or another [Haynes Boone Real Estate Attorney](#).