



WHAT EVERY
AGENT AND BROKER
SHOULD KNOW ABOUT

1099s, W-9s, AND CDAs

by Lori Levy

You don't want to draw the attention of the IRS. Fail to file the proper form when you make payments to others, though, and you may do just that.

If you pay for services, have an assistant who's an independent contractor, pay commissions to agents, or manage property for landlords, you need to know what circumstances trigger the requirement to use IRS-related forms. Here are answers to some key questions regarding your responsibilities.

What is a 1099?

A 1099 refers to IRS Form 1099. This form must be used when you (1) pay compensation of \$600 or more during a tax year (2) to an individual who is not an employee (3) for services provided by the individual (4) during the course of your trade or business. If any of those four elements do not apply to a situation, you do not have to file a 1099.

Requiring you to report these payments on 1099s gives the IRS a way to

make sure the individuals you file 1099s for report their income.

As a real estate broker, you should file 1099s for real estate commissions and referral fees or other compensation you pay to cooperating brokers, broker-associates, and sponsored salespeople. Brokers and agents are also required to report compensation paid to licensed or unlicensed assistants who are independent contractors, as well as other individuals who provide services to your business.

If you earned income that meets the criteria for a 1099 but you never received the 1099, you are not relieved of your requirement to report that income on your tax return.

A broker or agent must also file a 1099 when paying rent for office space, unless the rent is being paid to a real estate agent or a corporation, as discussed below.

I see different 1099 forms. How do I know which one to use?

Use the 1099-MISC to report fees, commissions, and other compensation that meet the four criteria stated on page 16.

Do I have to file a 1099 if I am paying a business entity? What about a partnership or sole proprietorship?

A 1099 is generally not required when the party receiving the payment is a corporation. However, the IRS does require a 1099 if you pay \$600 or more to an attorney, regardless of the attorney's business status.

The IRS considers partnerships, sole proprietorships, and other non-corporate entities to be individuals, so 1099s must be filed when these types of entities are compensated.

How do I know if a party is a corporation or an individual?

You can find out by requesting a W-9 from all parties you compensate.

What is a W-9?

A W-9 refers to IRS Form W-9. This form provides necessary information to a party who is required to file a 1099. That information includes identifying information, and it specifies whether the payee is an individual or corporation. It is a good idea to request a W-9 from all parties you compensate to help you assess the need to file a 1099 based on the corporate or non-corporate status of the entity and to ensure you are providing accurate information on the 1099 when you do need to file.

Where do I file?

You must file the form with the IRS and provide a copy of the form to the individual who received the compensation.

When do I file?

Typically, a 1099 must be filed with the IRS no later than February or March of the tax year following the year of payment. A copy of the 1099 must be sent to the payee no later than January 31 of that year. Check with your tax consultant or go to irs.gov for current deadlines.

As a listing broker, I always provide the title company with a Commission Disbursement Agreement (CDA) before a transaction closes to instruct the title company to pay my salespeople and cooperating brokers directly. Do I still have to provide a 1099-MISC to my salespeople and to cooperating brokers since I never actually received the money?

Yes. A CDA is merely an instruction to the title company to directly pay to someone else money that would have first come to you and is yours to disburse. Having the title company pay those funds directly does not release you of the requirement to file a 1099-MISC when the amounts paid total more than \$600 within a tax year.

I am a license holder who represents buyers. Even though I always rebate a portion of my commission to my buyer clients at closing, my broker provides me a 1099-MISC for the full commission I was to receive. Is that correct?

Yes. Your broker is required to provide a 1099-MISC to you for the full amount of the commission you earned. Whether you direct a portion of your commission to be

paid to someone else at closing does not affect that requirement.

When I rebate a portion of my commission to my client, should I provide a 1099-MISC to my client if the amount I rebate is more than \$600?

No. Your client is not providing a service to you, so you are not required to provide a 1099 to the buyer.

How do the 1099-MISC reporting requirements affect property managers?

A property manager must provide a 1099-MISC to a landlord for rents collected. You should report the gross rent even if you retain part of the rent to cover your property-management compensation or to pay service providers. A property manager also must file a 1099-MISC for payments made to a service provider if the payments total more than \$600 during a tax year and the service provider is not a corporation. This is true even if you compensate the service providers out of funds retained from rents collected.

I've heard that landlords also have to file a 1099-MISC for payments the landlord makes to service providers related to the rental property. Is that true?

No. While at one time federal law required landlords to file 1099s for such payments, that law was quickly repealed after it went into effect. No such requirement currently exists.

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