

Ch. 1 BASIC CONCEPTS

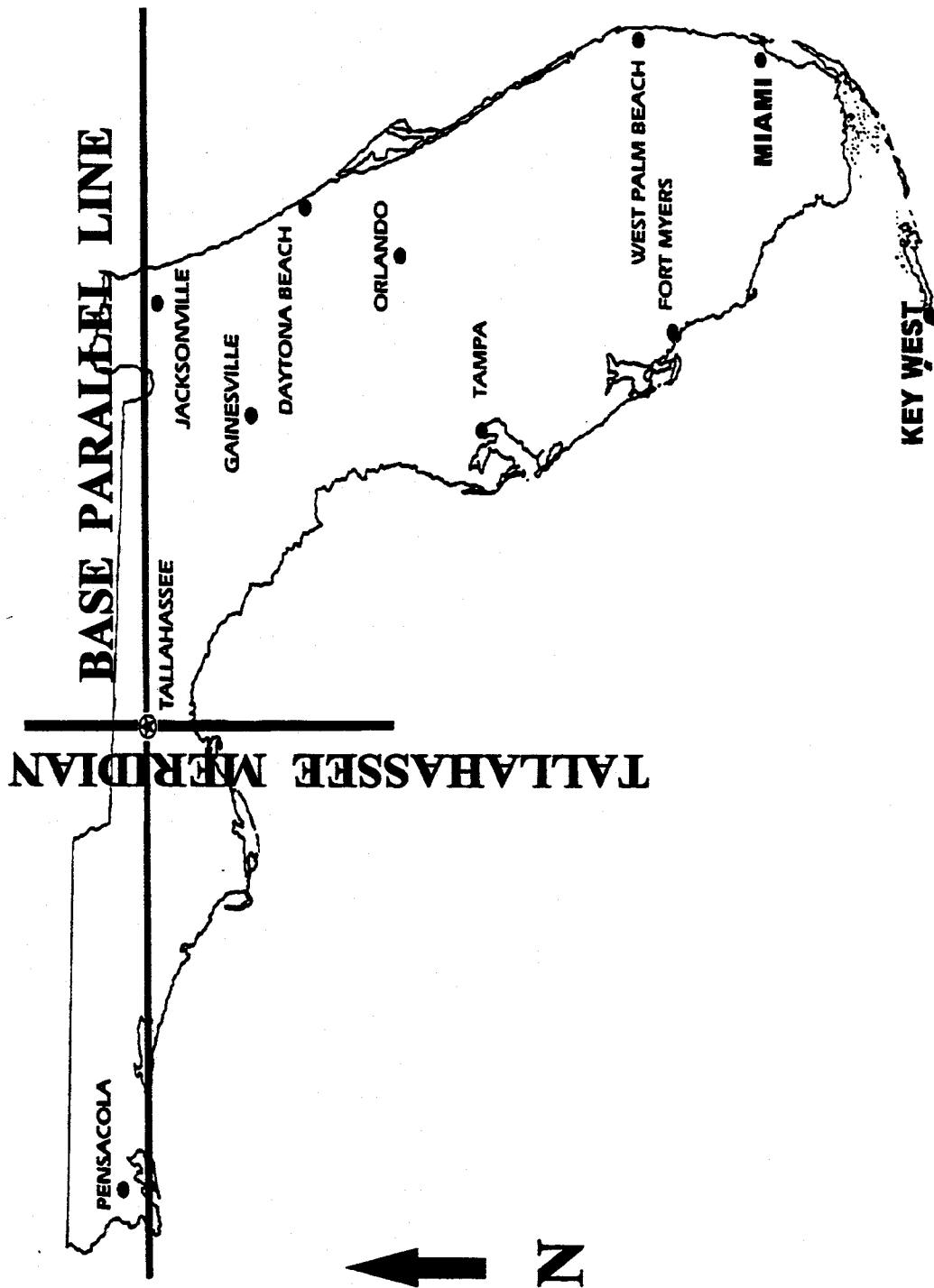
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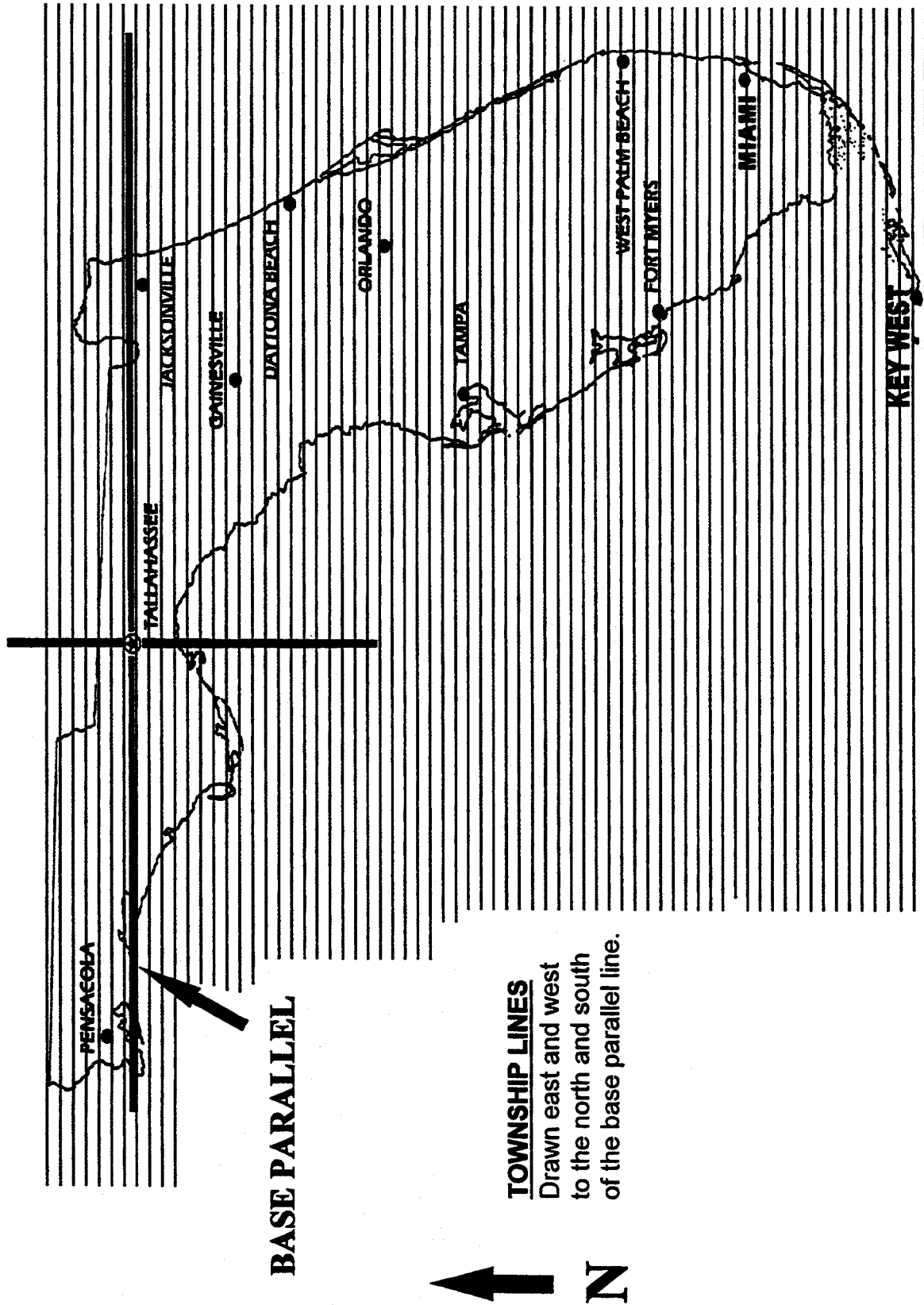
GOVERNMENT SURVEY METHOD

Congress provided for the survey of all lands in the United States. The government survey excluded the original thirteen colonies where most of the land had been sold and already described using the monuments method. Texas was also excluded. In the rest of the United States, including Florida, the government survey is the basis for the legal description of real property.

This rectangular survey system is said to have been devised by Thomas Jefferson in 1784 and was officially adopted by the United States in 1805. In Florida, Tallahassee is the location for the initial starting point of government surveys. A principal meridian (Tallahassee meridian) runs north and south through Tallahassee to the north boundary of the state and south out into the Gulf of Mexico. A base parallel line has also been established running east and west through Tallahassee intersecting the Tallahassee meridian and extending east into the Florida boundary (and beyond).



Again starting at Tallahassee, the State is divided by lines running east and west, each measured six miles apart and drawn to the north and south of the base parallel line. These are called **township lines**. Each area lying between township lines is given a number determined by counting north and south from Tallahassee and is designated by **number and direction**, i.e., Township 1 North, Township 7 North, Township 30 South, Township 55 South.

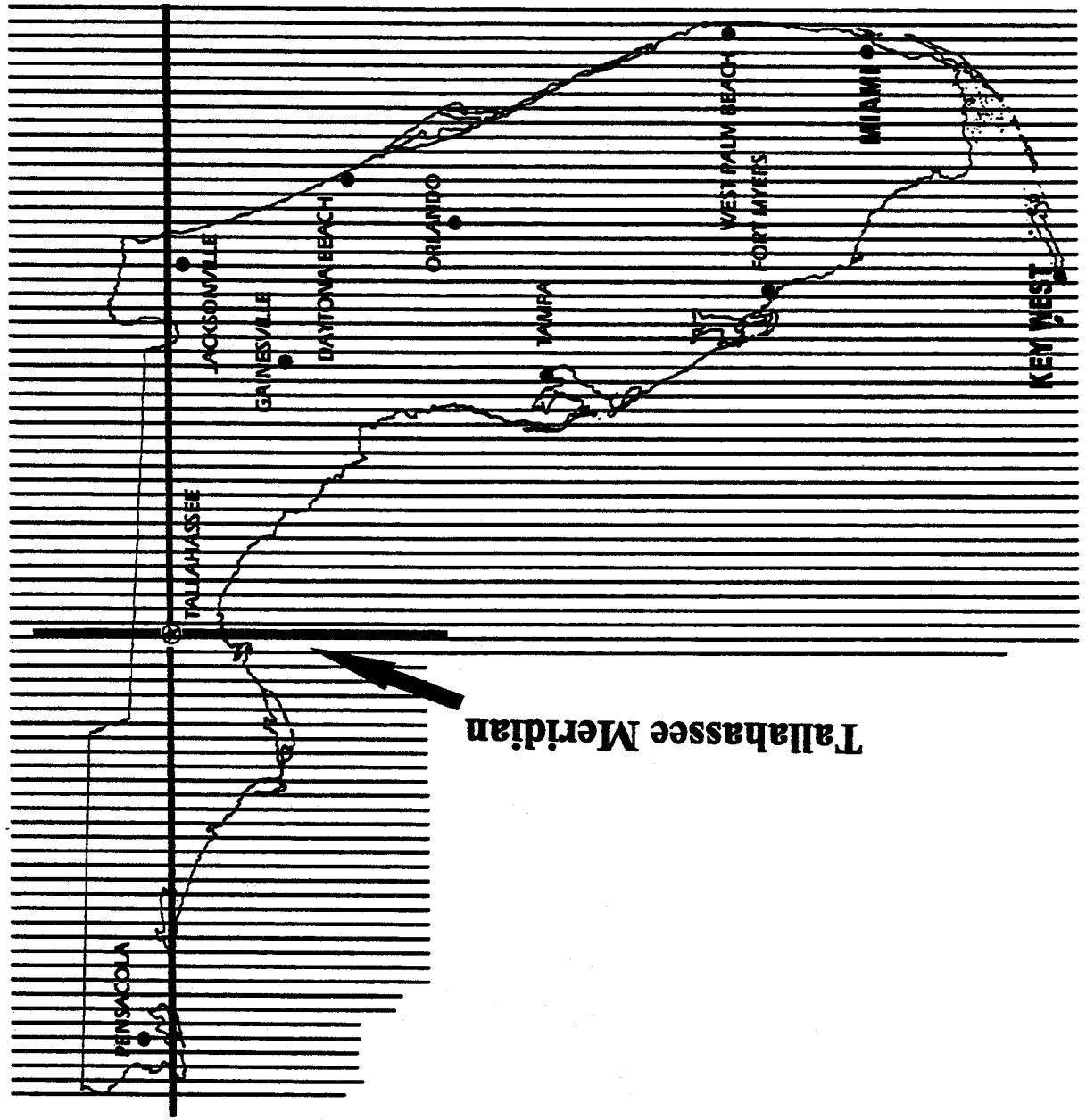


The state is then divided by lines running north and south, each measured six miles apart drawn to the east and west of the Tallahassee meridian. These are called **range lines**. Each area lying between range lines is given a number determined by counting east or west from Tallahassee and is designated by **number and direction**, i.e., Range 10 East, Range 20 East, Range 5 West, Range 40 West.

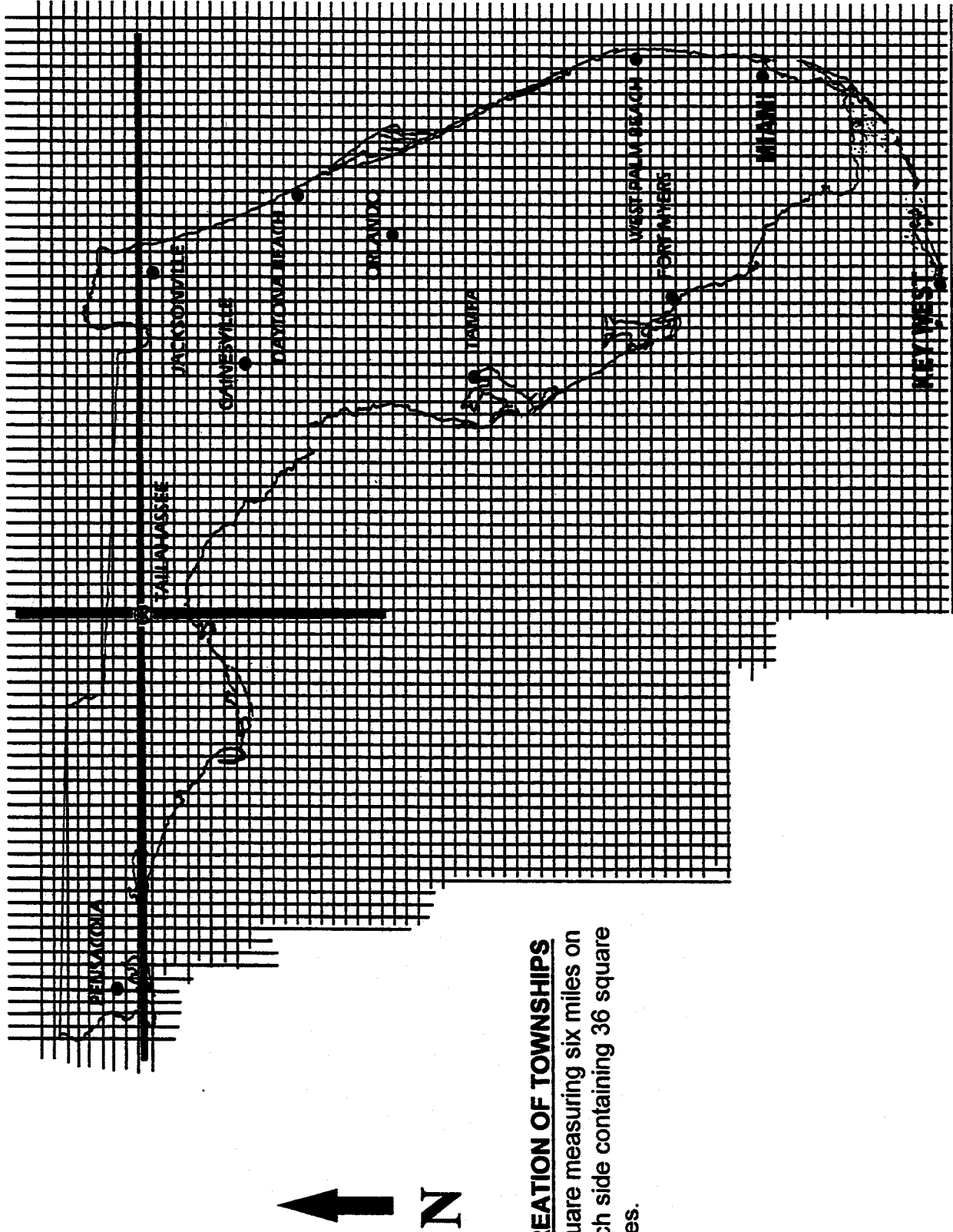


RANGE LINES

Drawn north and south
to the east and west
of Tallahassee Meridian



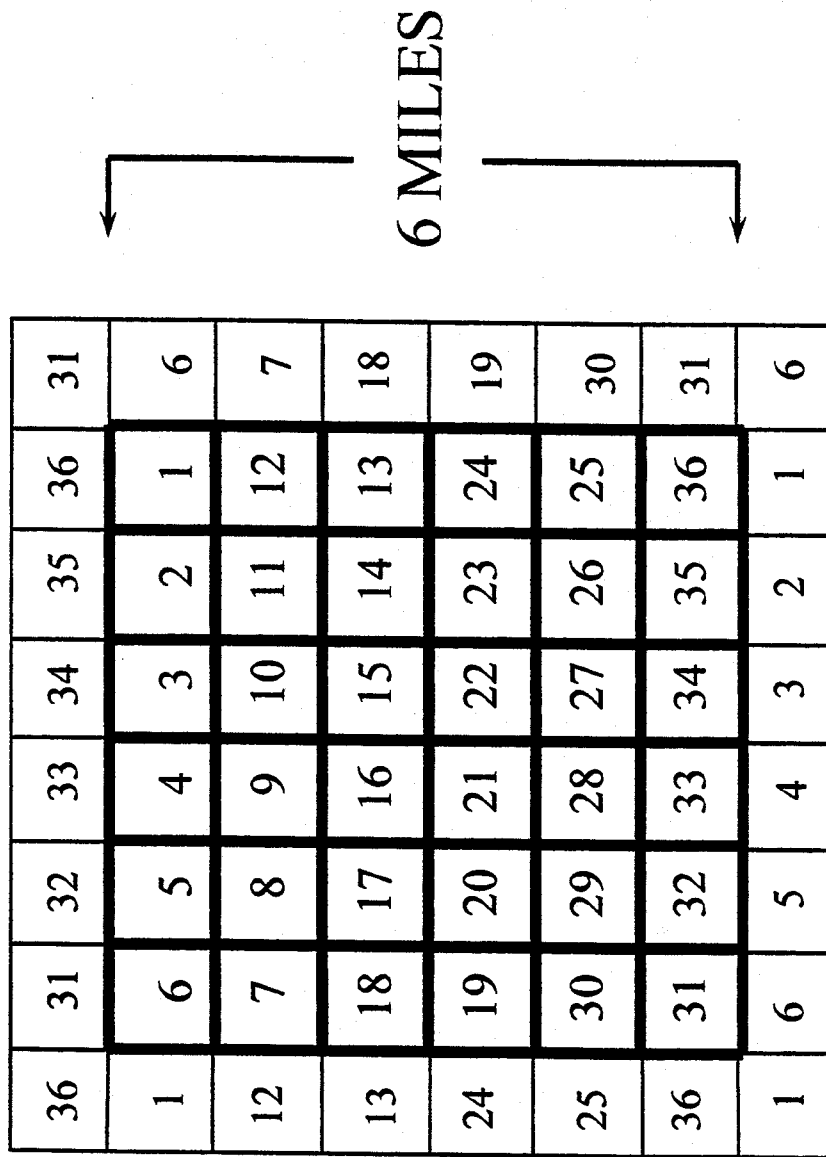
Each small box created by the intersecting lines is a township and can be identified by the **range** number and direction and **township** number and direction. In a legal description the location of the township is given first by the range, i.e., Township 21 South, Range 34 East, Township 2 North, Range 28 West.



CREATION OF TOWNSHIPS

Square measuring six miles on each side containing 36 square miles.

Each box or square formed by intersecting township and range line is further divided into 36 squares, each having sides measuring one mile. Each square is called a section. Each section is given a number with Section 1 always in the northeast corner of the township. Section 6 is in the northwest corner, Section 31 is in the Southwest corner and Section 36 is in the southeast corner. In a legal description the section number precedes the township and range numbers.

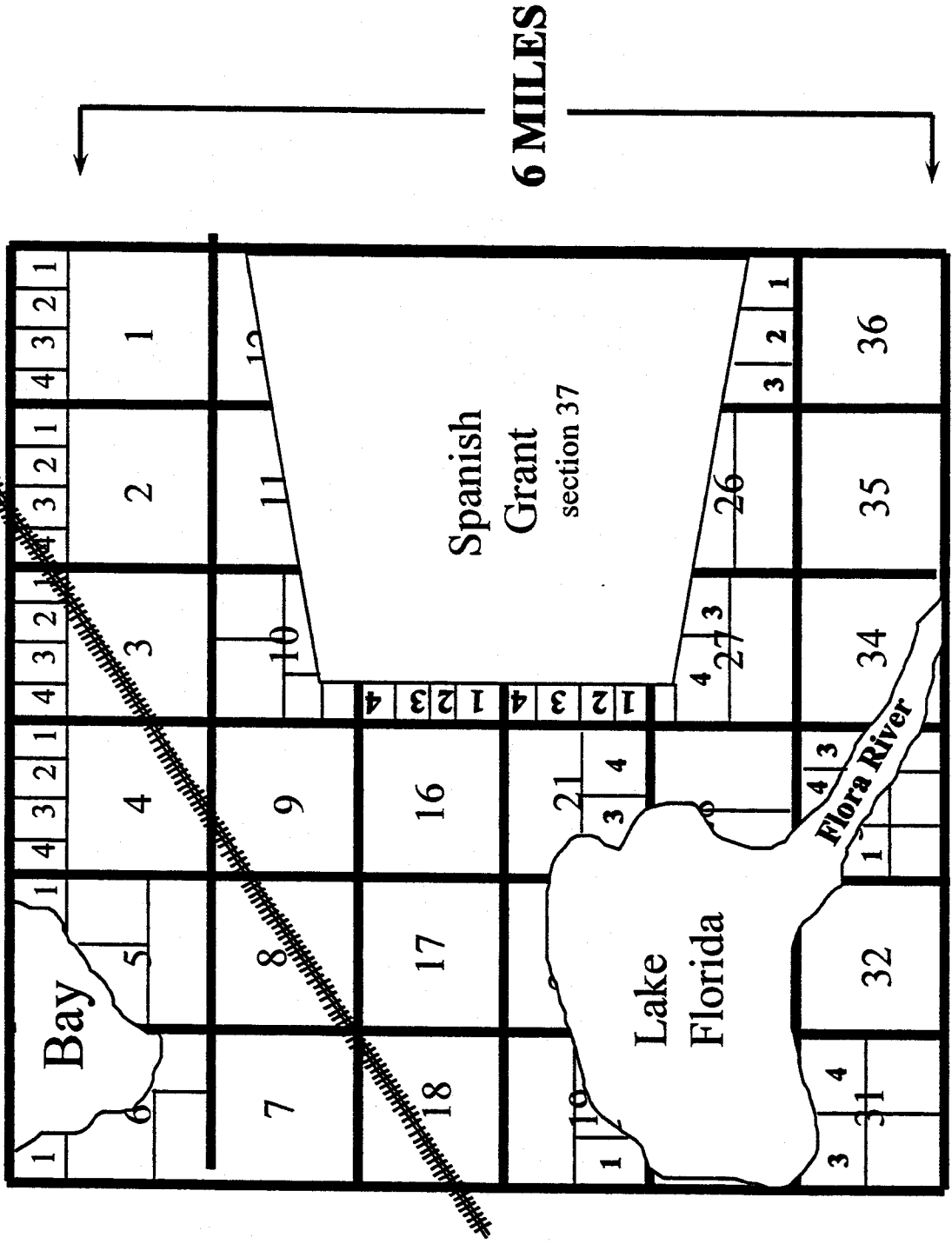


Because there may be variations from the rectangular section, Sections 1, 2, 3, 4, 5, 6, 7, 18, 19, 30 and 31 are called fractional or correction sections. When there is more or less than the regular number of acres in a township, it is reflected along the north side of Sections 1, 2, 3, 4, 5 and 6 and along the west side of Sections 6, 7, 18, 19, 30 and 31. In some instances the intersection of the township and range lines may create a square larger than six miles on each side so that the sections may be oversized. The overage may be divided equally throughout all 36 sections. There are a few areas in the state where the township is larger than six miles square and hiatus sections have been created between other sections.

Each regular section, in theory a square with all sides measuring one mile, contains 640 acres and can easily be divided into halves, then quarters and so on down into smaller divisions until the specific property being described is located. Each division is identified using a **direction** of North (N), South (S), East (E) or West (W) and Northeast (NE), Northwest (NW), Southeast (SE) or Southwest (SW) and a **fraction**. Any fraction may be used with N, S, E or W but only 1/4 should be used in combination with NE, NW, SE or SW since we use a quartering system to divide a section. The lines establishing the divisions are drawn horizontally and vertically, not diagonally.

In many areas of the state there are irregular tracts created by bays, oceans, navigable lakes, oversized sections, Spanish grants, rivers, etc., which cannot be divided using a regular quartering system. In these situations the government surveyor divided the land into irregular parcels called **government lots**, giving each lot a number within a section. When property is described using a government lot it is done in accordance with the original government survey or in accordance with a resurvey done to correct the original. Copies of the government surveys should be a part of the reference materials in every title plant. In examining the surveys be sure you look at the original and any resurveys. They are the official source for the size of every section, the location of government lots and are a basis for determining what bodies of water **may** be navigable.

TOWNSHIP

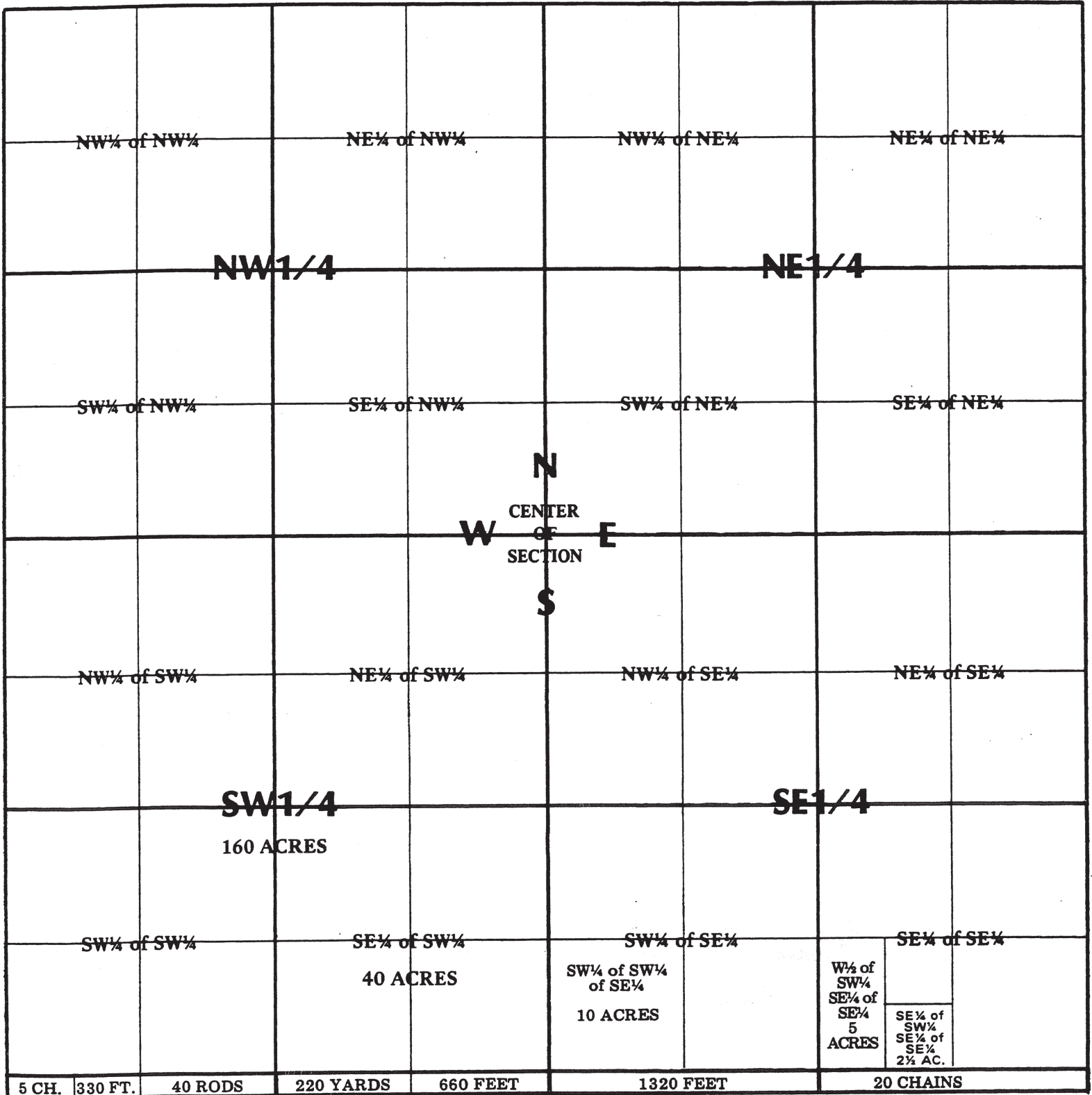


SECTION CHART

Section _____

Township _____ South

Range _____ East



SCALE — 8 Inches Equals 1 Mile

1 Inch Equals 10 Chains, 660 Feet, 40 Rods or 220 Yards

One Link = 7.92 Inches.

One Rod = 16½ Feet, ¼ Chain or 25 Links.

All Measurements in Government Surveys are Indicated by Links and Chains.

One Chain = 66 Feet, 4 Rods or 100 Links.

One Mile = 5,280 Feet, 320 Rods or 80 Chains.

One Square Rod Contains 272¼ Square Feet.

One Acre is about 208¼ Feet Square.

One Acre Contains 43,560 Square Feet or 160 Square Rods.

½ Acre (Homestead within City Limits) Contains 21,780 Sq. Ft.

Ten Square Chains = One Acre.

A Section of Land is One Square Mile and Contains 640 Acres.

¼ Section Contains 160 Acres.

A Township Area is 36 Square Miles and Contains 23,040 Acres.

Sectional Map of a Township
With Adjoining Sections

36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	18	17	16	15	14	13	18
24	19	20	21	22	23	24	19
25	30	29	28	27	26	25	30
36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6

EQUIVALENTS	FEET	66	132	198	264	330	396	462	528	594	660	726	792	858	924	990	1056	1122	1188	1254	1320
	YARDS	22	44	66	88	110	132	154	176	198	220	242	264	286	308	330	352	374	396	418	440
	RODS	4	8	12	16	20	24	28	32	36	40	44	48	52	56	60	64	68	72	76	80
	CHAINS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
	CHAINS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20

Closing Disbursements of Brokerage Commissions

BY PHILIP HOLTSBERG, FUND SENIOR UNDERWRITING COUNSEL

This article addresses the propriety of disbursing real estate brokerage commissions to anyone other than the licensed real estate broker(s) involved in the transaction. The circumstances and conditions under which such disbursements may be made are also covered.

Through time, the real estate brokerage industry has become progressively more competitive. Like professional athletes, the best agents as “players” are likened to “free agents” seeking out the most lucrative employment terms

“...whether direct payment to the agent is legally permissible.”

from brokers as “team owners.” Real estate brokers have offered increasingly more generous compensation and more liberal conditions of employment in order to sign these agents. As a result, agents who work on a traditional fixed percentage split of commission with their broker are an endangered species and quite possibly those with the least business. Historically, the brokerage commission has been remitted by the closing agent to the brokers involved in the transaction. It was then up to the brokers to pay their agents.

One of the “perks” recent generations of free agents have negotiated for is direct payment of the agent’s share of the commission at closing by the settlement agent, not afterwards by the broker. The question remains, however, whether direct payment to the agent is legally permissible. It is to this question, we now turn.

The Florida legislature has deemed it to be in the interest of the public welfare to regulate *real estate brokers* and their *sales associates*. Sec. 475.001, F.S. (2011). Although a sales associate may perform many of the acts that a real estate broker does, a sales associate **must** work under the direction, control or management of a real estate broker. Sec. 475.01(1)(j), F.S. (2011). Sometimes a person who is otherwise qualified to be licensed as a real estate broker elects to work as a sales associate employed by another real estate broker. When that happens, the person is called a *broker associate*. Sec. 475.01(1)(b), F.S. (2011). This article uses the term *agent* to refer to both *sales associates* and *broker associates*.

The business relationship between a broker and an agent may be one of employer-employee or that of an independent contractor. Sec. 475.01(2), F.S. (2011). In addition, agents may hold their Florida licensure as an individual, a professional corporation, a limited liability company, or as a professional limited liability company. Sec. 475.161, F.S. (2011). Agents may not be associated with more than one broker at any one time. Sec. 475.215(2), F.S. (2011).

The real estate brokerage industry butts up against a statutory proscription when it comes to commissions and the

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ability of agents to be compensated directly by the closing agent. Sec. 475.42(1)(d), F.S. (2011), provides: “A sales associate may not collect any money in connection with any real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of the employer and with the express consent of the employer; ...” Moreover, there are criminal penalties for “any person” who violates this provision. Sec. 475.42(2), F.S. (2011).

At face value, it would appear that direct payment to the agent is not permitted, and that settlement agents face criminal exposure should they accommodate the request for direct payment of commission to the agent. However, on Feb. 8, 1999, the Florida Real Estate Commission issued a Final Order in Case No. FREC DS-98-02 in connection with a request by a licensed real estate broker for a declaratory statement concerning the predecessor to the cited statute.

According to the Final Order, The Florida Real Estate Commission interprets the statute in a way that does allow a real estate broker to provide written authorization to a closing agent to disburse commissions directly to the agent. The written authorization must identify the specific transaction, identify the agent entitled to disbursement and identify the specific amount the closing agent is to disburse to the agent. The written authorization should be signed by the real estate broker; however, if the real estate broker has branch offices, the written authorization of the broker’s office manager is acceptable. This Final Order creates a safe harbor for brokers and agents within the context of administrative proceedings before the Florida Real Estate Commission. But what about settlement agents who comply with requests made by brokers and agents in conformity with the Final Order?

Unfortunately, there are no reported Florida Attorney General opinions construing the criminality provisions contained within Sec. 475.41(2), F.S. (2011). Moreover, in *Rifkin v. Florida Real Estate Commission*, 349 So.2d 1249 (Fla. 4th DCA 1977), the Fourth District Court reversed a decision made by the Commission finding a real estate broker guilty of fraudulent or dishonest dealing. In so doing, the court held

that the Commission lacked the authority to adjudicate guilt or innocence under a criminal statute. Therefore, it remains a theoretical possibility that a criminal prosecution could be instituted against a settlement agent who complies with a request made pursuant to the Final Order and that good faith reliance upon that Final Order would not constitute a viable defense to that prosecution.

On the other hand, the competitive landscape for closing business may be such that a closing agent considers such risk de *minimus* and will make a business decision to comply with requests for direct disbursement to agent when those requests fulfill the requirements of the Final Order. Should a closing agent elect to do so, what additional issues are involved?

If the transaction being closed is subject to RESPA, direct payment of a portion of the brokerage commission to the agent has implications for the preparation of the HUD-1. The instructions for the completion of the HUD-1 which are contained in the Appendix 1 to Regulation X (24 CFR 3500 et seq.), specifically make reference to the terms “sales agent” as well as “real estate broker” in discussion of the 700 Series. The instructions also state: “For each separately identified settlement service in connection with the transaction, the name of the person ultimately receiving the payment must be shown together with the total amount paid to such person.” Therefore, when a portion of the brokerage commission is being disbursed by the settlement agent directly to the agent, in a RESPA transaction the split should be shown, and the name of the agent payee and the amount paid to such agent should be shown within the 700 Series in addition to the name of the broker and the amount disbursed to the broker.

There are also potential IRS reporting requirements associated with payments of commissions to agents. Closing agents who accommodate requests from real estate brokers and who make payments of brokerage commission directly to agents for the convenience of the brokers should consult with their own tax professionals to establish procedures to follow when doing so, and to have on hand an inventory of forms necessary for reporting purposes. Because of the complexities and evolving nature of reporting requirements, title agents are well advised to preplan for the requirements at the beginning of each tax year for the transactions which will take place during that year. For example, a settlement agent likely will need an inventory of IRS Forms W-9 on hand in order to obtain agents’ taxpayer identification numbers which are needed to prepare the reporting forms. The IRS has published reporting requirements for IRS Form 1099-MISC that may be applicable when a business disburses non-employee compensation in excess of \$600 to one person. The IRS has indicated that if the following four conditions are met, a business must generally report a payment made as nonemployee compensation (Box

7 of the Form 1099-MISC). (1) The payment was made to someone who is not your employee. (2) The payment was made for services in the course of trade or business. (3) The payment or payments to the recipient exceeds \$600 during the year. (4) The recipient is an individual, partnership, or in some cases, is a corporation.

In conclusion, while it would appear that a safe harbor exists for Florida real estate brokers and their agents in terms of direct disbursement of commission to agents, the practice is not entirely risk free to the settlement agent in their role as the harbor master! ☐



team education

Your Partner in Legal Education

Distressed real estate transactions have continued to dominate the discussion of Florida's homeownership market. For the real estate practitioner, understanding the complexities of such transactions is a vital part of practice today – whether representing sellers of underwater properties or potential purchasers at a short sale. In this ever evolving marketplace, property owners need guidance on the various alternatives available when faced with distressed property ownership, including refinancing, loan modifications, short sales, deeds in lieu of foreclosure, bankruptcy, and defending the foreclosure action. Such guidance includes the stringent document production requirements for application to lender specific and government sponsored relief programs, potential tax and deficiency implications when selling the property, and managing expectations of potential purchasers at a short sale.

You can educate yourself and your office staff on these issues by taking advantage of The Fund's very popular Fundinar – *Dealing with Distressed Real Estate*, being offered online throughout the month of June.

Other informative and dynamic three hour live in-person seminars and one hour live Fundinars* (web based seminars) are available to Fund Members and their staffs during the month of June. *In Search of a Probate Paradigm (It's about time)* and *Distressed Residential Property Transactions, Short Sales, Deeds in Lieu, REOs* will be presented as live three-hour seminars in various locations through out the state. One-hour Fundinars available for viewing in June include *The Quality Assurance Review*, *"Now That's a Horse of a Different Color"*, *Harness the Power of Florida's New Power of Attorney Law in Real Estate Transactions*, and *Liens, Liens, Everywhere a Lien*. CLE credit with The Florida Bar, NALA, and DFS is available for all live, in-person seminar course offerings. CLE

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NEW FINCEN GTO; SELF-FILING NOW MANDATORY FOR MEMBERS

BY CONNIE CLARK, FUND SR. UNDERWRITING COUNSEL

Beginning on Dec. 1, 2019, all Fund Members will be responsible for filing their own reportable transactions under the current Geographic Targeting Order (GTO) dated Nov. 8, 2019, and all future GTOs. [View the Current Geographic Targeting Order.](#)

Reporting Criteria

Criteria for reporting under the current GTO:

- The transaction involves a purchase of one or more residential real properties (not vacant land) in Miami-Dade, Broward, or Palm Beach Counties; and
- The total purchase price is \$300,000 or more; and
- The purchaser is a corporation, limited liability company (LLC), partnership, or other similar legal entity. The definition does not include trusts, natural persons or U.S. publicly-traded companies or their subsidiaries; and
- The purchaser purchases the residential real property without a bank loan or other similar form of institutional financing; and
- The purchaser pays any part of the purchase price using currency, cashier's checks, certified checks, traveler's checks, money orders, business or personal checks or wire fund transfers or payments. There is no requirement to report check numbers or wire routing numbers.

The current GTO is like the previous GTO with one change. It is no longer necessary to report a transaction when the purchaser is a U.S. publicly-traded company or its subsidiary. A search on the website of the U.S. Securities Exchange Commission will allow Fund Members to determine whether the purchaser is within this category of companies. <https://www.sec.gov/edgar/searchedgar/companysearch.html>.

New Commitment Requirement

Beginning on Dec. 1, 2019, if an order evidences characteristics of a reportable transaction, Fund Members will see the new FinCEN requirement shown below in Fund-prepared commitments. Fund Members who prepare their own commitments must also include this requirement for applicable transactions:

Completed IRS Currency Transaction Report (CTR) or proof that the subject transaction is exempt from FinCEN Geographic Targeting Order dated Nov. 8, 2019. The issuing agent may remove this requirement for the transaction if title is taken in the name(s) of a natural person or a trust OR if this transaction is a financed acquisition by a bank loan or other similar form of institutional financing. Within 30 days of the closing date, the issuing agent shall electronically file the CTR in the Department of Treasury BSA E-Filing System portal at <https://bsaefiling.fincen.treas.gov> and submit a copy of the CTR along with confirmation of its filing to Old Republic Title at FinCENconfirm@TheFund.com.

We Are Here to Help

Self-filing of the completed CTR for a covered transaction, after the collection of the necessary data, has always been available to Fund Members. Several firms currently report their transactions through the Department of Treasury's BSA E-Filing System portal and report that the average time to complete both the data collection form and enter the information in the portal is 10-12 minutes. The filing process involves some up-front effort to follow the simple instructions to become a Bank Secrecy Act (BSA) E-Filer. The Fund's Legal Education Department has prepared a 25-minute video and [written instructions](#) with screen shots and a Tips & Tricks section to guide Fund Members and their staffs through the entire process. View the Educational Materials at <https://www.thefund.com/ondemand/legal-education/fincen-reporting-ctr>.

Please direct any questions you may have concerning FinCEN reporting obligations to Underwriting at (800) 432-9594 or Underwriting@TheFund.com.



NEW MEMBERS

Stephany Garcia
Samantha Joseph

Miami
Jacksonville



Financial Crimes Enforcement Network
U.S. Department of the Treasury

Washington, D.C. 20220

GEOGRAPHIC TARGETING ORDER

The Director of the Financial Crimes Enforcement Network (FinCEN) hereby issues a Geographic Targeting Order (Order) requiring Old Republic National Title Insurance Company to collect and report information about the persons involved in certain residential real estate transactions, as further described in this Order.

I. AUTHORITY

If the Director of FinCEN finds that reasonable grounds exist for concluding that additional recordkeeping and reporting requirements are necessary to carry out the purposes of the Bank Secrecy Act (BSA) or to prevent evasions thereof, the Director may issue an order that imposes such requirements on any domestic financial institution or nonfinancial trade or business or group of domestic financial institutions or nonfinancial trades or businesses in a geographic area. *See* 31 U.S.C. § 5326(a); 31 C.F.R. § 1010.370; Treasury Order 180-01. Pursuant to this authority, the Director of FinCEN hereby finds that reasonable grounds exist for concluding that the additional recordkeeping and reporting requirements described below are necessary to carry out the purposes of the BSA or prevent evasions thereof.¹

II. ADDITIONAL RECORDKEEPING AND REPORTING REQUIREMENTS

A. Business and Transactions Covered by This Order

1. For purposes of this Order, the “Covered Business” means Old Republic National Title Insurance Company and any of its subsidiaries and agents.
2. For purposes of this Order, a “Covered Transaction” means a transaction in which:
 - i. Residential real property is purchased by a Legal Entity (as this term is defined in Section III.A of this Order);
 - ii. The purchase price of the residential real property is in the amount of \$50,000 or more in the City or County of Baltimore in Maryland, or in the amount of \$300,000 or more in any of the following areas:
 - (1) The California counties of Los Angeles, Santa Clara, San Diego, San Francisco, or San Mateo;

¹ The Bank Secrecy Act, as amended, is codified at 12 U.S.C. §§ 1829b, 1951-1960 and 31 U.S.C. §§ 5311-5314, 5316-5336. Regulations implementing the Bank Secrecy Act appear at 31 C.F.R. Chapter X.

Geographic Targeting Order Covering Old Republic National Title Insurance Company
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- (2) The Colorado counties of Adams, Arapahoe, Clear Creek, Denver, Douglas, Eagle, Elbert, El Paso, Fremont, Jefferson, Mesa, Pitkin, Pueblo, or Summit;
 - (3) The Connecticut counties of Fairfield or Litchfield;
 - (4) The Florida counties of Broward, Charlotte, Collier, Hillsborough, Lee, Manatee, Miami-Dade, Palm Beach, Pasco, Pinellas, or Sarasota;
 - (5) The Hawaii counties of Hawaii, Kauai, Maui, or Honolulu, or the City of Honolulu;
 - (6) The Illinois county of Cook;
 - (7) The Maryland counties of Anne Arundel, Howard, Montgomery, or Prince George's;
 - (8) The Massachusetts counties of Bristol, Essex, Middlesex, Norfolk, Plymouth, or Suffolk;
 - (9) The Nevada county of Clark;
 - (10) The Boroughs of Bronx, Brooklyn, Manhattan, Queens, or Staten Island in New York City, New York;
 - (11) The Texas counties of Bexar, Dallas, Harris, Montgomery, Tarrant, Travis, or Webb;
 - (12) The Virginia counties of Arlington or Fairfax, or the cities of Alexandria, Falls Church, or Fairfax;
 - (13) The Washington county of King; or
 - (14) The District of Columbia.
- iii. Such purchase is made without a bank loan or other similar form of external financing by a financial institution that has both an obligation to maintain an anti-money laundering program and an obligation to report suspicious transactions under FinCEN regulations appearing in Chapter X of Title 31 of the Code of Federal Regulations.
 - iv. Such purchase is made, at least in part, using currency or a cashier's check, a certified check, a traveler's check, a personal check, a business check, a money order in any form, a funds transfer, or virtual currency.

B. Reports Required to be Filed by the Covered Business

1. If the Covered Business is involved in a Covered Transaction, then the Covered Business shall report the Covered Transaction to FinCEN by filing a FinCEN Currency

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Transaction Report within 30 days of the closing of the Covered Transaction. Each Currency Transaction Report filed pursuant to this Order must be: (i) completed in accordance with the terms of this Order and the Currency Transaction Report instructions (when such terms conflict, the terms of this Order apply), and (ii) e-filed through the BSA E-Filing system.²

2. A Currency Transaction Report filed pursuant to this Order shall contain the information specified in this section II.B about the Covered Transaction (when completing Part I, a Covered Business should select the + field as necessary to allow for the reporting of multiple parties).

Part I

3. A Covered Business must include in Part I information about the identity of the individual primarily responsible for representing the Legal Entity by selecting Field 2, box b (“Person conducting transaction for another”). The Covered Business also must obtain and record a copy of this individual’s driver’s license, passport, or other similar identifying documentation. A description of such documentation must be provided in Field 20.
4. A Covered Business also must include in Part I information about the identity of the Legal Entity by selecting Field 2, box c (“Person on whose behalf transaction was conducted”), and also selecting the “If entity” check box.
5. A Covered Business also must include in Part I information about the identity of the Beneficial Owner(s) (as defined in Section III.A of this Order) of the Legal Entity by selecting Field 2, box c. The Covered Business must obtain and record a copy of the Beneficial Owner’s driver’s license, passport, or other similar identifying documentation. A description of such documentation must be provided in Field 20 of the form.

Part II

6. Part II shall contain information about the Covered Transaction as follows:
 - i. Field 23: Date of closing of the Covered Transaction.
 - ii. Field 25.z: Total purchase price of the Covered Transaction and the method of payment (leave Fields 25 a – i blank).

Part III

² In order to electronically file a Currency Transaction Report, a Covered Business will need a BSA E-Filing User account. To create a BSA E-Filing User account, please visit https://bsaefiling.fincen.treas.gov/Enroll_Now.html. For more information on E-Filing, please visit <https://bsaefiling.fincen.treas.gov/> and review “About the BSA E-Filing System”.

7. Part III shall contain information about the Covered Transaction as follows (when completing Part III, if the Covered Transaction involves the purchase of multiple properties, a Covered Business should select the + field as necessary to allow for the reporting of multiple property addresses):
 - i. Fields 33-37: Address of real property involved in the Covered Transaction.
 - ii. Field 41: Total purchase price of the real property listed in Fields 33-37. This should reflect the same purchase price as Field 25.z, except where multiple properties are purchased in the same Covered Transaction. When reporting a purchase of multiple properties in the same Covered Transaction, report total purchase price in Part II, Field 25.z, and price per property in Field 41 for each property.

Part IV

8. Part IV shall contain information about the Covered Business. The Covered Business shall ensure the term “REGTO0425” remains in Field 45 of Part IV.

III. GENERAL PROVISIONS

A. Additional Definitions

1. For purposes of this Order:
 - i. “Beneficial Owner” means each individual who, directly or indirectly, owns 25% or more of the equity interests of the Legal Entity purchasing real property in the Covered Transaction.
 - ii. “Legal Entity” means a corporation, limited liability company, partnership, or other similar business entity, whether formed under the laws of a state, or of the United States, or a foreign jurisdiction, other than a business whose common stock or analogous equity interests are listed on a securities exchange regulated by the Securities Exchange Commission (SEC) or a self-regulatory organization registered with the SEC, or an entity solely owned by such a business.
2. All terms used but not otherwise defined herein have the meaning set forth in 31 C.F.R. Chapter X.

B. Order Period

The terms of this Order for purchases in all counties covered by this Order are effective beginning April 15, 2025 and ending on October 9, 2025.

C. Retention of Records

The Covered Business must: (1) retain all records relating to compliance with this Order for a period of five years from the last day that this Order is effective (including any renewals of this

Order); (2) store such records in a manner accessible within a reasonable period of time; and (3) make such records available to FinCEN, or any other appropriate law enforcement or regulatory agency, upon request.

D. No Effect on Other Provisions of the Bank Secrecy Act

Nothing in this Order otherwise modifies or affects any provision of the regulations implementing the BSA to the extent not expressly stated herein.

E. Confidentiality

This Order and its terms are not confidential.

F. Compliance

The Covered Business must supervise, and is responsible for, compliance by each of its officers, directors, employees, and agents with the terms of this Order. The Covered Business must transmit this Order to each of its agents. The Covered Business must also transmit this Order to its Chief Executive Officer or other similarly acting manager.

G. Penalties for Noncompliance

The Covered Business, and any of its officers, directors, employees, and agents, may be liable, without limitation, for civil or criminal penalties for violating any of the terms of this Order.

H. Validity of Order

Any judicial determination that any provision of this Order is invalid shall not affect the validity of any other provision of this Order, and each other provision shall thereafter remain in full force and effect. A copy of this Order carries the full force and effect of an original signed Order.

I. Paperwork Reduction Act

The collection of information subject to the Paperwork Reduction Act contained in this Order has been approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 1506-0056. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Geographic Targeting Order Covering Old Republic National Title Insurance Company
April 14, 2025

J. Questions

All questions about the Order should be directed to www.fincen.gov/contact.

Dated: April 14, 2025

Andrea M. Gacki
Director
Financial Crimes Enforcement Network



FREQUENTLY ASKED QUESTIONS

Issued: November 5, 2020

Subject: Geographic Targeting Orders Involving Certain Real Estate Transactions

On **November 5, 2020** FinCEN issued Geographic Targeting Orders (GTOs) requiring Covered Businesses to collect and report information about certain residential real estate transactions in the following jurisdictions: (1) the Texas counties of Bexar (San Antonio), Tarrant (Fort Worth), or Dallas; (2) the Florida counties of Miami-Dade, Broward, or Palm Beach; (3) the Boroughs of Brooklyn, Queens, Bronx, Staten Island, or Manhattan in New York City, New York; (4) the California counties of San Diego, Los Angeles, San Francisco, San Mateo, or Santa Clara; (5) the City and County of Honolulu in Hawaii; (6) the Nevada county of Clark (Las Vegas); (7) the Washington county of King (Seattle); (8) the Massachusetts counties of Suffolk, or Middlesex (Boston); or (9) the Illinois county of Cook (Chicago).

As a general matter, FinCEN expects a Covered Business to implement procedures reasonably designed to ensure compliance with the terms of the GTOs, including reasonable due diligence to determine whether it (or its subsidiaries or agents) is involved in a Covered Transaction and to collect and report the required information. In complying with the terms of the GTOs, a Covered Business may reasonably rely on information provided to it by third parties, including other parties involved in Covered Transactions.

To assist Covered Businesses in complying with the GTOs, FinCEN is publishing this list of frequently asked questions (FAQs) in response to inquiries FinCEN has received. These FAQs are applicable only to the GTOs and should not be construed to apply to any other FinCEN regulation or order. Terms used but not otherwise defined herein shall have the meaning set forth in the GTOs. For additional questions, please contact the FinCEN Resource Center at FRC@FinCEN.gov.

1) What does the term “residential real property” mean?

For purposes of the GTOs, “residential real property” means real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families.

2) To what extent must a Covered Business verify information about the Beneficial Owner of a Purchaser?

The GTOs require a Covered Business to collect and report certain identifying information about the Beneficial Owner(s) of the Purchaser in a Covered Transaction. For purposes of the GTOs, a “Beneficial Owner” means each individual who, directly or indirectly, owns 25% or more of the equity interests of the Purchaser. The GTOs provide that the Covered Business must obtain and record a copy of the Beneficial Owner’s driver’s license, passport, or other similar identifying

documentation. The Covered Business may reasonably rely on the information provided to it by third parties involved in the Covered Transaction, including the Purchaser or its representatives, in determining whether the individual identified as a Beneficial Owner is in fact a Beneficial Owner.

3) Who is considered a Covered Business’s “agents” for purposes of the GTOs?

A Covered Business’s “agents” refers to people or entities that are authorized by the Covered Business, usually through a contractual relationship, to act on its behalf to provide title insurance underwritten by the Covered Business (or its subsidiaries). FinCEN notes that the recordkeeping and reporting requirements under the GTOs are triggered only when a Covered Business (or its subsidiaries or agents) is involved in a Covered Transaction by providing title insurance underwritten by that Covered Business (or its subsidiaries) in connection with the Covered Transaction.

FinCEN also recognizes that a person or entity may be an independent agent of a Covered Business, and thus may act on behalf of multiple title insurance companies. A Covered Business is responsible for the recordkeeping and reporting requirements under the GTOs only when such agents are acting on its behalf in connection with a Covered Transaction.

4) What methods of payment are covered under Section II.A.2.iv of the GTOs?

Section II.A.2.iv of the GTOs, which lists one of the four criteria that triggers a Covered Transaction, provides: “Such purchase is made, at least in part, using currency or a cashier’s check, a certified check, a traveler’s check, a personal check, a business check, or a money order in any form, a funds transfer, or virtual currency.” Accordingly, payment of at least part of the purchase price using one of these methods, such as virtual currency, a wire transfer, a cashier’s check (sometimes referred to as a “bank check,” “official check,” or “treasurer’s check”), a personal check, a business check, or a certified check, triggers a Covered Transaction, assuming the other three criteria listed in Section II.A.2 are met. With respect to information required to be reported in Field 25.z of the FinCEN Currency Transaction Report, the Covered Business should include the total amount of the purchase price of the Covered Transaction. When reporting a purchase of multiple properties in the same Covered Transaction, report total purchase price in Part II, Field 25.z, and price per property in Field 41 for each property.

5) Is there a *de minimis* exception regarding the methods of payment covered under Section II.A.2.iv of the GTOs?

No. If any part of the purchase price was made using a method of payment specified in Section II.A.2.iv of the GTOs, then the transaction is considered a Covered Transaction (assuming the other three criteria listed in Section II.A.2 are met). FinCEN expects a Covered Business to take reasonable steps to determine whether any part of the purchase price was made using a method of payment specified in Section II.A.2.iv of the GTOs. FinCEN recognizes that in some instances a small percent of the purchase price of a residential real estate transaction may be held by a third party, such as a real estate agent holding an earnest money deposit. A Covered Business may reasonably rely on information provided to it by such third parties.

6) Who is the “individual primarily responsible for representing the Purchaser”?

The “individual primarily responsible for representing the Purchaser” means the individual authorized by the entity to enter legally binding contracts on behalf of the entity.

7) How long must a Covered Business retain records relating to compliance with the GTOs?

Consistent with the general recordkeeping provisions of the regulations promulgated under the Bank Secrecy Act, a Covered Business must retain all records relating to compliance with the GTOs for at least five years from the last day that the GTOs are effective (including any renewals thereof).

8) How must a Covered Business file a FinCEN Currency Transaction Report?

A sample Currency Transaction Report template is located at this link:

https://bsaefiling.fincen.treas.gov/docs/GTO/RealEstate_GTO_Template.pdf. (If opening this link in Chrome, please note that you must click the download icon in the top right; once downloaded, you may open the PDF using Adobe Reader.) This Adobe PDF template can be saved and reused. Once a Covered Business has filled out the template for a Covered Transaction, the Covered Business will need to log into the BSA E-Filing System, select Report 112–CTR under the “File FinCEN Reports” section, then choose the “Open Existing Report” option, browse to the saved template, and Sign, Save, and Submit the Currency Transaction Report.

Currency Transaction Report

Home

Step 1. Filing Institution
Contact Information

Step 2. Transaction Location(s)
Information

Step 3. Person(s)
Involved Information

Step 4. Amount and Type of
Transaction(s)



Currency Transaction Report

Version Number: 1.3

OMB No. 1506-0004, OMB No. 1506-0005, OMB No. 1506-0064

Steps to Submit Complete the report in its entirety with all requested or required data known to the filer. Click "Validate" to ensure proper formatting and that all required fields are completed. Sign with PIN. Click "Save"; filers may also "Print" a paper copy for their records. Click "Submit".

Filing Name

*1 Type of filing

☒

Initial report

☐

Correct/amend prior report

☐

FinCEN directed Backfiling

Prior report BSA Identifier

Save

Validate

Submit

Print

By providing my PIN, I acknowledge that I am electronically signing the BSA report submitted.

Sign with PIN

Release Date: 02/15/2018

Currency Transaction Report

Home

Step 1. Filing Institution Contact
Information

Step 2. Transaction Location(s)
Information

Step 3. Person(s) Involved
Information

Step 4. Amount and Type of
Transaction(s)

Part IV Filing Institution Contact Information

*52 Type of financial institution

Other

Other (specify)

Title Insurance Company

*43 Primary federal regulator

Internal Revenue Service (IRS)

53 If 52a - Casino/Card Club is checked, indicate type (check only one)

☐

State licensed casino

☐

Tribal authorized casino

☐

Card club

☐

Other

*44 Legal name of filing institution

45 Alternate name, e.g. trade name, DBA

REGTO????

*46 EIN

*47 Address

*48 City

*49 State

*50 ZIP Code

*51 Country

54 Filing institution ID type

ID number

*55 Contact office

*56 Phone number

Ext.

*57 Date filed

(Date filed will be auto-populated when the form is signed.)

Currency Transaction Report

Home

Step 1. Filing Institution
Contact Information

Step 2. Transaction Location(s)
Information

Step 3. Person(s)
Involved Information

Step 4. Amount and Type of
Transaction(s)

Part III Transaction Location 1 of 1

+ -

Would you like to insert all applicable filing institution information into Part III?

Yes

*38 Type of financial institution

Other

Other (specify)

Property Address (Enter Address in Item 33 -37)

*29 Primary federal regulator

Unknown

39 If 38a - Casino/Card Club is checked, indicate type (check only one)

☐ State licensed casino

☐ Tribal authorized casino

☐ Card club

☐ Other

*30 Legal name of financial institution

N/A

31 Alternate name, e.g. trade name, DBA

*32 EIN

☐ Unknown

*33 Address

*34 City

*35 State

*36 ZIP Code

*37 Country

40 Financial institution ID type

ID number

*41 Cash in amount for transaction location

*42 Cash out amount for transaction location

Currency Transaction Report

Home

Step 1. Filing Institution
Contact Information

Step 2. Transaction Location(s)
Information

Step 3. Person(s)
Involved Information

Step 4. Amount and Type of
Transaction(s)

Part I Person Involved in Transaction(s) 1 of 1

*2 a ☐ Person conducting transaction on own behalf b ☐ Person conducting transaction for another c ☐ Person on whose behalf transaction was conducted d ☐ Common carrier

3 ☐ Multiple transactions

Check ☐ If entity

*4 Individual's last name or entity's legal name ☐ Unknown

*5 First name ☐ Unknown

6 Middle name

Suffix

7 Gender

8 Alternate name

9 Occupation or type of business

9a NAICS Code

*10 Address ☐ Unknown

*11 City ☐ Unknown

*12 State ☐ Unknown *13 ZIP/Postal Code ☐ Unknown

*14 Country ☐ Unknown

*15 TIN ☐ Unknown 16 TIN type

*17 Date of birth ☐ Unknown

18 Contact phone number Ext.

19 E-mail address

*20 Form of identification used to verify identity ☐ Unknown

☐ Driver's license/State ID ☐ Passport ☐ Alien Registration ☐ Other

Number Country Issuing State

21 Cash in amount for individual or entity listed in Item 4 \$

Account number

22 Cash out amount for individual or entity listed in Item 4 \$

Account number

Currency Transaction Report

Home

Step 1. Filing Institution
Contact Information

Step 2. Transaction Location(s)
Information

Step 3. Person(s) Involved
Information

Step 4. Amount and Type of
Transaction(s)

Part II Amount and Type of Transaction(s). Check all boxes that apply.

*23 Date of transaction

24 ☐ Armored car (FI Contract) ☐ ATM ☐ Mail deposit or shipment ☐ Night deposit ☐ Aggregated transactions ☐ Shared branching

*25 CASH IN: (in U.S. dollar equivalent)

a Deposit(s)	\$	<input type="text"/>	.00
b Payment(s)		<input type="text"/>	.00
c Currency received for funds transfer(s) out		<input type="text"/>	.00
d Purchase of negotiable instrument (s)		<input type="text"/>	.00
e Currency exchange(s)		<input type="text"/>	.00
f Currency to prepaid access		<input type="text"/>	.00
g Purchases of casinos chips, tokens and other gaming instruments		<input type="text"/>	.00
h Currency wager(s) including money plays		<input type="text"/>	.00
i Bills inserted into gaming devices		<input type="text"/>	.00
z Other (specify):		<input type="text"/>	
Enter Type of Instrument, e.g. check and/or wire		<input type="text"/>	.00

Total cash in \$.00

*27 CASH OUT: (in U.S. dollar equivalent)

a Withdrawal(s)	\$	<input type="text"/>	.00
b Advance(s) on credit (including markers)		<input type="text"/>	.00
c Currency paid from funds transfer(s) in		<input type="text"/>	.00
d Negotiable instrument(s) cashed		<input type="text"/>	.00
e Currency exchange(s)		<input type="text"/>	.00
f Currency from prepaid access		<input type="text"/>	.00
g Redemption(s) of casino chips, tokens, TITO tickets and other gaming instruments		<input type="text"/>	.00
h Payment(s) on wager(s) (including race and OTB or sports pool)		<input type="text"/>	.00
i Travel and complimentary expenses and book gaming incentives		<input type="text"/>	.00
j Payment for tournament, contest or other promotions		<input type="text"/>	.00
z Other (specify):		<input type="text"/>	

Total cash out \$.00

26 Foreign cash in

Foreign Country

+ -

28 Foreign cash out

Foreign Country

+ -

GTO Information Collection Form

Page 1 of 4

Under 31 U.S.C. § 5326(a), the Treasury Department's Financial Crimes Enforcement Network (FinCEN) issued a Geographic Targeting Order to title insurance companies requiring the collection of beneficial ownership information for certain real estate transactions.

Please complete the below questionnaire. This Company will rely on the answers provided to meet its reporting obligations under Federal law.

Who is completing this form?

Name	Position/Title	Company/Law Firm	
Postal Address (Headquarters)	City	State	Zip
Phone	E-Mail	Fax	

Transactional Information

Property Address (If multiple properties see NOTE below)				
City		State	Zip	County
Date of Settlement	Total purchase price (If multiple properties see NOTE below) \$			
Type of Transaction: <input type="checkbox"/> Residential (1-4 family) <input type="checkbox"/> Commercial			Bank Financing: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Purchaser type: <input type="checkbox"/> Natural Person <input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Partnership <input type="checkbox"/> Other				

NOTE: If more than one property is purchased, list each address and purchase price on an addendum.

Purchase Funds Information

Total Amount paid by below instruments: \$	
Which type of Monetary Instruments were used (Use check boxes below)	
<input type="checkbox"/> U.S. Currency (Paper money & coin)	
<input type="checkbox"/> Foreign Currency	Country:
<input type="checkbox"/> Cashier's check(s)	<input type="checkbox"/> Money order(s)
<input type="checkbox"/> Certified check(s)	<input type="checkbox"/> Personal or Business check(s)
<input type="checkbox"/> Wire or other funds transfer(s)	<input type="checkbox"/> Virtual Currency

GTO Information Collection Form

Page 2 of 4

Individual Primarily Representing Purchaser

(Defined as the individual authorized by the entity to enter into legally binding contracts).

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country		Gov't ID Number
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # <i>(if none write N/A)</i>		% of ownership
Address		City		State Zip

Purchasing Entity Name & Address

Name of Purchaser			
Taxpayer ID Number or EIN <i>(if none write N/A)</i>		Doing Business Name (DBA) <i>(if none write N/A)</i>	
Address		City	State Zip

Complete the information below if the real estate purchase is being made by a corporation, LLC, partnership, or other legal entity. (Do not report trusts.)

For Corporations, LLCs, Partnerships and Other Entities provide the information for:

- Each **BENEFICIAL OWNER** defined as an individual who, directly or indirectly, owns 25% or more of the equity interests of the Purchaser.
- If a legal entity or a series of legal entities own the equity interests of the Purchaser, provide information for each **BENEFICIAL OWNER**, of each legal entity in the series of legal entities.

(Note: It is NOT necessary to complete the address fields if the information is on a legible copy of the government issued ID submitted to the title company.)

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country		Gov't ID Number
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # <i>(if none write N/A)</i>		% of ownership
Address		City		State Zip

GTO Information Collection Form



**American Land
Title Association**
Protecting the American Dream Since 1907

Page **3** of **4**

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # (if none write N/A)		% of ownership
Address		City	State	Zip

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # (if none write N/A)		% of ownership
Address		City	State	Zip

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # (if none write N/A)		% of ownership
Address		City	State	Zip

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # (if none write N/A)		% of ownership
Address		City	State	Zip

GTO Information Collection Form

Page **4** of **4**

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # (if none write N/A)		% of ownership
Address		City	State	Zip

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # (if none write N/A)		% of ownership
Address		City	State	Zip

Attach Legible copy of government issued identification (i.e. passport, driver's license, etc.)				
Type of ID		Issuing State or Country	Gov't ID Number	
Last Name		First Name		M.I.
Date of Birth	Occupation	Individual Taxpayer ID # (if none write N/A)		% of ownership
Address		City	State	Zip

I declare that to the best of my knowledge, the information I have furnished is true, correct and complete. I understand that this Title Company will rely on this information for the purposes of completing any reports made pursuant to an obligation under 31 U.S.C. § 5326(a),

Signature:	Date:
Type or Print Name:	Title:

The
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CONCEPT

FLORIDA

JANUARY 2009

VOL. 41

The Who, What, and When of 1099-S Reporting

By Roger M. Pomerance, President, Florida Exchange

Form 1099-S, *Proceeds From Real Estate Transactions*, is required to be filed for reporting information regarding a real estate transaction pursuant to 26 C.F.R., Sec. 1.6045-4 and 26 U.S.C. 6045(e). This reporting requirement applies for all real estate transactions with dates of closing that occurred on or after Jan.1, 1991. This article will identify the Who, What, and When of this reporting information, along with permissible substitute forms and those real estate transactions which are exempt from the reporting requirements.

Who is responsible for filing a 1099-S Return?

Although there may be other persons involved in a real estate transaction, only the real estate "reporting person" must file the return with respect to a real estate transaction and furnish a statement to the transferor (seller). Under Sec. 6045(e) the "reporting person" is the person responsible for closing the transaction. Where a Uniform Settlement Statement prescribed under the Real Estate Settlement Procedures Act is used, the person listed as settlement agent is considered the person responsible for closing the transaction. If a Uniform Settlement Statement is not used, or if a Uniform Settlement Statement is used but no person is listed as settlement agent, then the person responsible is the person who prepares a closing statement presented to the parties in connection with the real estate transaction. For purposes of this section of the Code, a closing statement is defined as any closing statement, settlement statement, including a Uniform Settlement Statement, or other written document that identifies the transferor and transferee (buyer), reasonably identifies the real property and describes the manner in which the proceeds were disbursed with the closing. Where no closing statement is used, the person responsible for closing the transaction is the first of the persons that participate in the transaction as: (a) the attorney for the transferee

present at the delivery of the transferees note or a significant portion of the cash proceeds to the transferor, or who prepares or reviews the preparation of documents transferring ownership of the real estate, (b) the attorney for the transferor under the same guidelines as (a), or (c) the title or escrow company that acts as the disbursing agent of the most significant portion of the gross proceeds.

If no one is responsible for closing the transaction, then the order or priority establishing responsibility for closing the transaction is as follows: the mortgage lender, the transferor's broker, the transferee's broker or the transferee, all as defined under Sec. 6045(e)(6). The Code does permit a person to be designated as the reporting person provided there is a written designation agreement executed at or prior to the time of closing by all parties to the agreement including the designated person. The designation agreement may be in any form containing the information required under Sec. 6045(e)(5) and may be included on the closing statement.

A reporting person who is required to file a return of information using a Form 1099-S shall also furnish a written statement to the transferor containing the same information reported to the Internal Revenue Service (IRS). This requirement may be satisfied by furnishing the transferor a copy of a

(Continued on page 3)

In This Issue

- Advocating for Fund Member Agents' Legislative Interests 8
- Are You Ready for the New Year? 9
- Florida Bar Announcement on IOTA Accounts 10

Who, What, and When...continued from page 1

completed Form 1099-S (copy B) or a substitute Form 1099-S that complies with current revenue procedures under Sec. 1.6045-4(m), including the following legend shown on Form 1099-S: *“This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.”* A Uniform Settlement Statement (under RESPA) may be used as the written statement if it is conformed by including on the statement the legend (above) shown on Form 1099-S and by designating which information is reported to the IRS. A statement shall be considered furnished to a transferor if it is given to the transferor in person, either at closing or thereafter, it is mailed to the transferor at the transferor’s last known address, or electronically.

What is considered a Real Estate Transaction?

A real estate transaction consists, in whole or in part, of the sale or exchange of “reportable real estate” for money, indebtedness, property other than money, or services. “Reportable real estate” means any present or future ownership interest in: (i) land (whether improved or unimproved), including air space; (ii) any inherently permanent structure, including any residential, commercial or industrial building; (iii) any condominium unit, including appurtenant fixtures and common elements (including land); or (iv) any stock in a cooperative housing corporation. The term ownership interest includes fee simple interest, life estates, reversions, remainders and perpetual easements. In addition the term also includes any previously created rights of possession or use for all or a portion of any particular year, such as a leasehold, easement or timeshare, provided such rights have a remaining term of at least 30 years, as determined on the date of closing, including any periods where the rights may be renewed. Note: there is no distinction between warranty deeds and other types of deeds when conveying an ownership interest for purpose of requiring a return of information using a Form 1099-S.

Certain real estate transactions, transfers of interest and types of transferors are considered exempt and excepted from reporting using a Form 1099-S even if the transaction involves reportable real estate. A transaction that is not a sale or

exchange, such as a financing or refinancing that is not related to an acquisition of real property; a gift; a bequest; or a “de minimis” transfer in which the total consideration, in money, services and property, received in connection with the transaction is less than \$600 in value as of the date of closing; are all exempt from the reporting requirements. In addition, a transfer in full or partial satisfaction of any indebtedness secured by the property including a foreclosure, transfer in lieu of foreclosure or an abandonment, are also exempt from the reporting requirements under Form 1099-S. A person, governmental entity, or financial institution who is in the business of lending money in connection with their trade or business and who acquires an interest in property that was security for the debt reports these transfers using Forms 1099-A or 1099-C, however those forms and their reporting requirements are beyond the scope of this article. A full or partial satisfaction of any indebtedness secured by the property including a foreclosure, transfer in lieu of foreclosure, or an abandonment, is to be distinguished from a “short sale” which is a sale or exchange or reportable real estate and subject to the reporting requirements using a Form 1099-S.

A Form 1099-S is not required with respect to a sale or exchange of an interest in, surface or subsurface natural resources, such as timber, water, ores or other natural deposits, whether or not such natural resources or crops are severed from the land; a burial plot or vault; or a manufactured structure used as a dwelling, such as a mobile home, that was assembled at a location different from where it is used and the structure is not affixed to a foundation; provided such transfer of interest is not related to the sale or exchange of reportable real estate. For example, a transfer of an unaffixed mobile home that is unrelated to the sale or exchange or reportable real estate is excepted from the reporting requirements under this regulation.

Corporations, governmental units, and certain volume transferors are considered exempt and excepted from the reporting requirements required by a Form 1099-S. Absent actual knowledge to the contrary, a reporting person may treat a transferor as exempt provided the transferor meets certain requirements under the Regulations. To be treated as a corporation the name must contain an unambiguous expression of corporate status, such as Incorporated, Inc., Corporation, Corp., or P.C. (but not Company or Co.); the name contains the term “insurance company,” “reinsurance company,” or

“assurance company”; or the transfer or loan documents clearly indicate the corporate status of the transferor. Where the transferor is a partnership or a limited liability company (LLC), these entities are not considered exempt and a Form 1099-S is required on the sale or exchange of reportable real estate using the entity’s Employer Identification Number (EIN). Even if the general partner or the member of the LLC is a corporation, a return of information using a Form 1099-S is still required.

A governmental unit is defined under the regulations as The United States, a state, The District of Columbia, a possession of the United States, a political subdivision or any wholly-owned agency or instrumentality of any of the foregoing. In addition, a foreign government, a political subdivision thereof, an international organization, or any wholly-owned agency or instrumentality of the foregoing would qualify as exempt from the reporting requirements.

A transferor may be treated as an exempt volume transferor only if the reporting person receives a certification of exempt status. The certification of exempt status must contain, (a) the name address and tax payer identification number of the transferor; (b) sufficient information to identify any other wise reportable real estate that has not been reported by virtue of the transferor’s exempt status; and (c) a declaration that the transferor has sold or exchanged during either of the prior two calendar years or during the current calendar year, or as of the date of closing, reasonably expects to sell or exchange during the current calendar year at least 25 separate items of reportable real estate to at least 25 separate transferees, and that each such item of reportable real estate was or will be held primarily for sale or resale to customers in the ordinary course of business. The certification must be signed under penalties of perjury by the transferor or any person who is authorized to sign a declaration in behalf of the transferor and received by the reporting person no later than the time of closing. A reporting person may accept or disregard the certification and, instead, report with respect to the transaction. A sample declaration can be found in Sec. 1.6045-4(d)(3) of the regulations.

What information must be reported?

The current regulations under Sec. 1.6045-4(h) require the following information to be shown on a Form 1099-S:

(A) The name address and tax payer identification number (TIN) of the transferor. The reporting person must solicit the transferor’s TIN at or before the time of closing, and may be subject to a penalty for failure to file a correct return, including filing an incorrect TIN, or failure to report a TIN. The solicitation may be made in person or in a mailing that includes other items. In response, the transferor must furnish their TIN and certify that it is correct. The solicitation shall contain space for the name, address and TIN of the person for whom it is solicited, and a place to certify under penalties of perjury that the TIN furnished is the correct TIN of the transferor. The wording of the certification must be substantially similar to the following: “Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.” For U.S. persons, including U.S. resident aliens, a reporting person may request a TIN on a Form W-9, *Request for Taxpayer Identification Number and Certification*. Foreign persons must provide their information on the appropriate Form W-8 (includes Forms W-8BEN, W-8ECI, W-8EXP and W-8IMY). Instructions as to use of the appropriate Form W-8 and examples of such forms can be found at www.irs.gov/pub/irs-pdf/iw8.pdf.

(B) Alternatively, a reporting person may provide a written statement to the transferor similar to the following: “You are required by law to provide [insert name of reporting person] with your correct taxpayer identification number. If you do not provide [insert name of reporting person] with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.” A reporting person who does not receive the transferor’s TIN will not be subject to any penalty if the reporting person has complied with the requirements for soliciting the information.

In the case of multiple transferors, the reporting person shall file a separate information return with respect to each one. The reporting person must make a reasonable effort to contact all known transferors and must request an allocation of the gross

proceeds among transferors. The reporting person, however, may rely upon any unchallenged response of any transferor without the need to make additional efforts to contact other transferors after at least one complete allocation (whether or not contained in a single response) is received. If no allocation or an incomplete allocation is received, the entire unallocated gross proceeds (if any) shall be reported on the Form 1099-S made with respect to such transferor. If conflicting allocations are received, the reporting person shall report the entire gross proceeds on each Form 1099-S made with respect to the transaction.

Transferors who are husband and wife at the time of closing and hold the reportable real estate as tenants in common, joint tenants, tenants by the entirety, or community property are treated as a single transferor and only one Form 1099-S showing either of them as the transferor is required. Where the reporting person receives, at or prior to the time of closing, an uncontested allocation of gross proceeds between the husband and wife, a Form 1099-S is required for each of them according to the allocation.

A transfer of reportable real estate out of an estate or a Trust is also required for purposes of reporting information under a Form 1099-S. Large estates may have a separate TIN, in smaller estates the decedent's TIN would be used on the Form 1099-S.

- (C) **A general description of the real estate transferred.** The complete address of the property is sufficient to act as a general description of the property for purposes of completing a Form 1099-S. If the address would not sufficiently identify the property, a general description would also include a legal description (e.g., section, lot, and block) of the property.
- (D) **The date of closing.** Where a Uniform Settlement Statement is used, the date of closing is the "settlement date" indicated on the statement. In all other cases, the closing date is the earlier of, the date title is transferred or the date the economic burdens and benefits of ownership shift from transferor to transferee.

- (E) **The entire gross proceeds with respect to the transaction.** Gross proceeds means any cash received or to be received for the real property by or on behalf of the transferor, including a note or mortgage paid off at settlement. If the transferee assumes a liability of the transferor or takes the property subject to a liability, such liability is included as part of gross proceeds. Where a Uniform Settlement Statement is used, the gross proceeds generally will be the same amount as the contract sales price properly shown on that statement. In the case of multiple transferors, the allocation of gross proceeds to each transferor is the amount reported.
- (F) **An indication whether the transferor received (or will, or may, receive) property or services as part of the consideration for the transaction.**
- (G) **The reporting person's name, address, telephone number and TIN or EIN** (Employer Identification Number, if a business entity). Pursuant to section M of the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G (www.irs.gov/pub/irs-pub/i1099gi.pdf), the telephone number must provide direct access to an individual who can answer questions about the statement.
- (H) Any other information required by the Form 1099-S or its instructions (www.irs.gov/pub/irs-pub/i1099s.pdf), such as an account number and the buyer's part of real estate tax. The account number may be any number assigned to the payee that is unique and will distinguish the specific account. An account number is required if there are multiple accounts for a recipient for whom you are filing more than one Form 1099-S. For a real estate transaction involving a residence, the buyers' part of real estate tax is that portion of the real estate tax paid in advance by the seller but that is the liability of the buyer for the tax period extending beyond the closing date. This amount is shown as a credit to the seller in the 400 section, of the Uniform Settlement Statement, or a comparable form, provided at closing. There is no reporting requirement for the amount allocable to the buyer for real estate taxes paid in arrears. Typically, but not always, real estate transactions with a closing date of November 1st or later will

have an amount allocable to the buyer which must be included on the Form 1099-S.

When must the information be reported?

Form 1099-S is due to the IRS by February 28th. The requirement to file will be met if the form is properly addressed and mailed on or before the due date. If the regular due date falls on a Saturday, Sunday, or legal holiday, filing must be by the next business day. A business day is any day that is not a Saturday, Sunday, or legal holiday. If filing electronically to the IRS, the due date is March 31st. Publication 1220 of the IRS (www.irs.gov/pub/irs-pdf/p1220.pdf) provides the procedures for reporting electronically. Electronic filing is required when reporting 250 or more information returns, less than 250 information returns can be filed on paper but may also be filed electronically. If filed electronically, do not file the same returns on paper.

In those transactions where a reporting person is required to file Form 1099-S, they must also provide a statement containing the same information to the transferor. This may be accomplished in person, by mail, or electronically, at or after closing but by January 31 of the following year. Copy B of the official IRS Form 1099-S, a Uniform Settlement Statement (under RESPA) that has been conformed to include the legend and information shown on Form 1099-S or an acceptable substitute statement which complies with format and content requirements specified in Publication 1179 of the IRS (www.irs.gov/pub/irs-pdf/p1179.pdf) can be used. A reporting person may not separately charge any person involved in a real estate transaction for complying with Form 1099-S reporting requirements. 26 C.F.R., Sec. 1.6045-4(o).

What makes a real estate transactions exempt from reporting?

In addition to the exempt real estate transactions already mentioned, section 6045(e) of the Code was amended effective after May 6, 1997, to except any sale or exchange of reportable real estate from the reporting requirements if the seller provides a certification setting forth certain written assurances including, an assurance that the residence has been owned and used by the seller as their principal residence and that the full amount of the gain on the sale or exchange of the principal residence is excludable from gross income under 26 U.S.C 121. Section 121, as amended, excludes from gross income up to \$250,000 (\$500,000 if married and

either or both spouses meet the ownership and use requirements) of the gain on the sale or exchange of a principal residence. This exclusion may also apply to the sale or exchange of stock held by a person who is a stockholder in a cooperative housing corporation as defined in 26 U.S.C. 216. However, this exclusion does not apply for the gain on the sale or exchange if the principal residence was acquired by the tax payer in a like-kind exchange in which any gain was not recognized under 26 U.S.C. 1031. For additional information on the treatment of the gain on the sale or exchange of a principal residence in a like-kind exchange under 26 U.S.C. 1031, see "Recent Changes to Section 121 May Affect Property in a Like-Kind Exchange," 40 *Fund Concept* 112 (Dec. 2008).

In order for the sale or exchange to be exempt from the reporting requirements of Form 1099-S, the real estate reporting person must obtain from the seller a written certification, signed by the seller under penalties of perjury that, (1) the seller owned or used the residence as seller's principal residence for two of the last five years ending on the date of closing, (2) the seller has not sold or exchanged another principal residence during the two year period, (3) no portion of the residence has been used for business or rental purposes after May 6, 1997, (4) the sales price, gain on sale or exchange, marital status and filing requirements have been met, (5) the seller did not acquire the residence in an exchange to which Sec. 1031 of the Code applied and (6) if the seller acquired the residence in an exchange to which section 1031 applied, the exchange occurred more than five years prior to the present date of closing. A sample certification can be found in the documents module of the Funds' DoubleTime system under *Certification in Lieu of 1099-S* or can be obtained at www.irs.gov/pub/irs-irbs/irb07-04.pdf. A substitute certification form can be used provided the wording and content of the certification meet the IRS information requirements. The certification can be obtained at any time on or before January 31 of the year following the sale or exchange and must be retained for four years. A reporting person who relies on the certification will not be

THE FUND's main website can be accessed at www.thefund.com. THE FUND's website for consumers can be found at www.fundhomeinfo.com.

subject to penalties for failure to file an information return or failure to furnish a statement to the seller unless the reporting person has actual knowledge that any of the assurances contained in the certification is incorrect.

Conclusion

Although there are many types of, and circumstances surrounding real estate transactions, the basic Who, What and When is needed to aid Fund Agents in complying with the requirements of Form 1099-S reporting. The IRS also provides an information reporting customer service site at 1-866-455-7438 to answer most questions that may arise in the preparation and inclusion of information needed for Form 1099-S reporting.

Agents who fail to comply with the basic reporting requirements leave themselves open to incurring unnecessary penalties for failure to furnish information they already had or easily obtain. □



MARKETING

Business Development Boost for REC Members

By Michael Hammond, Fund Senior Vice President, Marketing Services

In the face of some of the most challenging conditions in decades, businesses of all kinds are forced to change. Like any business person, the real estate attorney who focuses on marketing and business development will thrive when the market recovers, taking advantage of their competitive edge and maximizing their potential.

Building on the marketing support it already offers through the statewide network of Real Estate Councils (RECs), THE FUND is pleased to facilitate providing REC members with access to more proven marketing and business development resources via teleconference calls, articles, blogs, audio courses, and eventually a structured marketing program, all designed to help real estate attorneys capture more business now. Then, as the market recovers, the program positions you to take full advantage of the market upturn. These resources

and programs are developed by Atticus, a long-time strategic partner of THE FUND, and the nation's leading premier practice management education and training organization for real estate attorneys.

These programs offer REC members marketing education to support them through this challenging time and to prepare them for the upturn by strengthening their marketing skills. The partnership will unfold in two key phases:

The program will launch in early 2009, offering free, high-value, live teleconference calls focused on topics such as:

- Internet Marketing Strategies for the Real Estate Attorney
- Generating Referrals through Public Relations Efforts
- Referral Marketing Systems to Drive New Closings

In addition to the teleconferences, Atticus will provide a syndicated marketing column each month for RECs to share with their members, access to archived articles, as well as recorded audio courses on a wide variety of marketing topics.

Look for more information from your local REC leadership on how to take advantage of these new marketing opportunities.

Atticus (www.atticusonline.com) is familiar to The Fund's membership — nearly 1,000 member agents have benefited from Atticus's programs, responding with strong, positive feedback regarding the efficacy of the programs in helping them develop more efficient, cost-effective and profitable real estate practices. Over the years, Atticus has demonstrated its success in helping real estate attorneys grow their business. For more information on Atticus, log onto www.atticusonline.com.

As the program launches, you will hear more from your Fund Member Account Executives, REC leaders and THE FUND regarding the program benefits available to you.



IN YOUR BEST INTEREST

The
Fund

CONCEPT

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1099-S Reporting: Practical Tips for Frequently Encountered Situations

By John Benson, Fund Underwriting Counsel

As we approach the end of the year, we are reminded of the requirement for reporting real estate transactions using the 1099-S reporting form. *Form 1099-S, Proceeds From Real Estate Transactions*, is required to be filed for reporting information regarding a real estate transaction pursuant to 26 C.F.R., Sec. 1.6045-4 and 26 U.S.C., Sec. 6045(e). This reporting requirement applies for all real estate transactions with dates of closing that occurred on or after Jan.1, 1991. Although there may be other persons involved in a real estate transaction, only the real estate "reporting person" must file the return with respect to a real estate transaction. Under Sec. 6045(e) the "reporting person" is the person responsible for closing the transaction. Where a Uniform Settlement Statement prescribed under the Real Estate Settlement Procedures Act is used, the person listed as settlement agent is considered the person responsible for closing the transaction. Sometimes however, a situation arises in which the reporting person is not sure whether a 1099-S form should be issued in their real estate transaction. This article will identify some frequently encountered situations that were presented to underwriting counsel for the determination of whether a 1099-S reporting form was required.

Subsequent Sale of Property by an Institutional Lender After Acquisition by Certificate of Title in a Foreclosure Action. For completing the closing transaction process, does a Form 1099-S need to be filed when an institutional lender acquires a property by certificate of title through a properly completed foreclosure action and subsequently sells to a bona fide purchaser?

An institutional lender is not automatically exempt under filing requirements for Form 1099-S reporting, however they may fall under those entities that are exempt from reporting under Form 1099-S. Corporations, governmental units and corporations are considered exempt from the reporting requirements for the 1099-S form. An institutional lender does not typically fall under a governmental unit or volume transferor but may very well fall under a corporation. To be treated as a corporation, the name must contain an unambiguous expression of corporate status or the transfer or loan documents clearly indicate the corporate status of the lender. If a Fund Member is unsure as to the status of the institutional lender, they should obtain a W-9 form from the bank to confirm if they are incorporated. If so, no Form 1099-S is required. If the W-9 form does not give an indication, then a Form 1099-S should be completed and submitted by the reporting person. It is important to note that where the lender/seller is a partnership or a limited liability company (LLC), these entities are not considered exempt

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and a Form 1099-S is required on the sale or exchange of reportable real estate using the entity's Employer Identification Number (EIN). Even if the general partner or the member of the LLC is a corporation, a return of information using a Form 1099-S is still required.

An Exchange of Real Property Pursuant to a Marital Settlement Agreement or Other Settlement Stipulation in a Dissolution of Marriage Action. Where a former husband and wife are divorced and as part of their settlement stipulation, the former husband's interest in the real property is being transferred to the former wife in exchange for forgiveness of the back child support payments owed by the former husband, is a Form 1099-S issued representing the value of the conveyance in exchange for the forgiveness of the back child support payments?

A Form 1099-S is required to be filed for reporting information regarding a real estate transaction *"consisting, in whole or in part, of the sale or exchange of reportable real estate for money, indebtedness, property other than money, or services."* An exchange of the property as forgiveness of back child support payments may be considered an exchange of reportable real estate for indebtedness. However, an exchange of real property *incident to a divorce* is considered a gift under 26 U.S.C., Sec. 1041. As a "gift" under paragraph 3 of exceptions set forth in the instructions for Form 1099-S, the transaction is not a reportable transaction for 1099-S reporting requirements. Note that a transfer is considered *incident to divorce* under section 1041 if such transfer (1) occurs within one year after the date on which the marriage ceases, or (2) is related to the cessation of the marriage. Where a transfer occurs between former spouses which does not meet (1) or (2) above, it would be a reportable transaction and on the 1099-S form, Box 4 would be checked which indicates something other than cash was received in exchange for the transfer.

The Settlement Statement (HUD-1) Reflects a Purchase Price Value for the Real Property and a Separate Line Item for Personal Property Sold as Part of the Transaction. Where the total amount paid in a real estate transaction includes both a purchase price for the real property and a separate

price for the personal property (furniture, etc.), what amount needs to be reported as the gross proceeds for purposes of Form 1099-S reporting?

The general instructions published by the Internal Revenue Service for Form 1099-S on page 3 under "Multiple Assets Sold" appear to indicate that all assets, both real and other are to be included in the amount for reporting of gross proceeds, *"if real estate is sold or exchanged and other assets are sold or exchanged in the same transaction, report the total gross proceeds from the entire transaction on Form 1099-S."* However on page 4 of those same instructions, under "Box 2 Gross Proceeds" appear to indicate that any personal property is not to be included, *"Gross proceeds do not include the value of property or services received or to be received by, or on behalf of, the transferor or separately stated cash received for personal property, such as draperies, rugs, or a washer and dryer."* These apparent inconsistencies were clarified by the Internal Revenue Service in that the term "multiple assets" on page 3 of the Instructions for 1099-S includes any property included within the HUD-1 statement and therefore would include both real and personal even if a separate line item was shown on the HUD-1 for personal property. All would be included in the gross proceeds for 1099-S reporting purposes. Property exempt from reporting under the instructions on page 4 under "Box 2 Gross Proceeds" indicating separately stated cash for personal property are meant for transactions separate from and not included on the HUD-1 statement such as a separate agreement for purchase of furnishings which are not included for purposes of 1099-S reporting.

Duplicate Form 1099-S Returns Are Sent for the Same Real Estate Transaction. How is a duplicate Form 1099-S return corrected when inadvertently sent for the same real estate transaction?

Unless steps are taken to correct the duplication, the Internal Revenue Service will treat the real estate transaction as two separate transactions, even where the information is identical for the seller. Fortunately, the *General Instructions for Certain Information Returns (including Forms 1099)* provides a procedure to correct a return which was filed when one should not have been filed on page 7 of the General Instructions. The Form 1099-S has at the top of

the form a box to check as "Corrected." Enter an "X" at the top of the Form and correct any information such as money amounts, by placing \$0.00 in the Form such as under Box 2 "Gross Proceeds." Report other information as per the original return. It is important to note that the same form for the year filed must be used when issuing a corrected form. A 2010 Form 1099-S will not be accepted for purposes of correcting a 2009 Form 1099-S.

There are many other situations that arise in the closing of real estate transactions. These frequently encountered situations are only a few of the multitude of situations that may occur in a real estate transaction and the reporting requirements necessary under Form 1099-S. The Internal Revenue Service provides an information reporting customer service site at 1-866-455-7438 to answer most questions regarding the need for a Form 1099-S and the information necessary for Form 1099-S reporting. When contacting the service site, Fund Members are forewarned that the wait for a real live person can be lengthy but worth the wait in the information received. Should you have any questions or need further assistance, Fund underwriting counsel are also available to assist you. □



Current Status of NAIC Title Agent Statistical Plan

By R. Norwood Gay III, Fund Sr. Vice President and Chief Legal Officer

The National Association of Insurance Commissions has adopted its version of a model title agent data call. The questions and specific instructions for the NAIC's data call can be found on its website (www.naic.org). Attorney agents have different instructions than non-attorney agents and regulators, to some extent, recognize the differences in business practices. One of the difficulties faced by attorney agents is allocation of expenses between title insurance and closings, and the practice of law.

Although not yet clearly stated in the specific instructions, it would appear that the NAIC is thinking along the lines of allocating expenses based on the ratio of law-practice income to title-insurance and closings income. It has been pointed out that this is not an altogether satisfactory solution, introducing some skewing of attorney-agent data, but one could argue that such data skewing would be minimal and having the data contributes to the ultimate purpose of the data call more than it detracts. Non-lawyer title agencies, of course, will not have such data skewing to contend with. In Florida, the entire issue of attorney agent data skewing may well be moot because of the ruling of the First District Court in *State, Dept. of Ins. v. Keys Title and Abstract Co., Inc.*, 741 So.2d 599 (Fla. 1st DCA 1999), in which the court said attorney agents were not required to submit information for a data call attempted by the former insurance commissioner.

Florida regulators participated in the data-call discussions. The NAIC continues to work on developing implementation tips. A survey of states was taken to determine if they need to take legislative or regulatory action to adopt the data call. Florida now says it has the requisite regulatory authority. States were also asked if they would likely adopt a data call using the format now approved by the NAIC Working Group. Twelve states indicated an interest – not exactly an overwhelming showing of support. Under NAIC rules, this modest response precludes the drafting and adoption of a model act for an Agent Statistical Plan.

ALTA is encouraging state land title associations to develop a strategy to engage with their regulators so that any changes the industry seeks will be included in the state's plan. FLTA needs to stay with this issue in case our regulators do indeed decide to go forward with developing their own statistical report. Perhaps the most important area of focus will be in the instructions for completing the report by the agent.

Two significant outstanding issues are whether the state can keep collected information confidential and whether the state will exempt smaller agents from reporting requirements.

A final note: the Statistical Plan fails utterly to capture the risk reduction expense that goes into every title policy issued, thus making it appear that

agreement with the plan administrator. This lien agreement is typically recorded in the official records and may be entitled “agreement,” “memorandum,” “financing agreement,” or “notice of lien” and will reference that the agreement is part of the PACE program. The repayment period can be up to 20 years.

As the properties that are subject to PACE liens are sold and refinanced, Fund Members will have to deal with these loans on several levels. Buyers may assume the lien if the lien is not paid off in advance of closing. It is recommended that buyers and sellers negotiate this matter at the time of the contract. If the PACE lien obligation is not negotiated in advance of contract execution, adjustment to the purchase price to account for the value of the unpaid improvements (which may not have been factored in to the contract sale price) may be requested by the buyer. The adjustment will likely have to be addressed by an addendum to the contract as the current FR/Bar and Florida Realtors versions do not specifically address PACE financed improvements. Also, as stated above, new financing may be delayed if the lender objects to the existence of the PACE lien or has additional conditions to approve a mortgage.

Insuring Requirements

Even though PACE liens are treated as special assessment liens, are fully assumable, and are collected in the real property tax bill, because of their unique nature and for insuring purposes, The Fund will call for the satisfaction of a recorded PACE lien prior to insuring.

Fund Members who receive branch-prepared commitments will see the following requirement (and Fund Members who prepare their own commitments should use the same):

Record satisfaction of that certain [type of lien] dated _____, duly recorded _____, in O.R. _____, Page _____, and/or Instrument No. _____. Alternatively, record release of the lien of such [type of lien] as to the subject property.

For Fund Members who do their own searches using ATIDS, PACE agreements are coded in ATIDS as an LN. Some PACE agreements may have been coded in

ATIDS as an AGR or other instrument code. The Fund is working to recode all PACE instruments as LN; however, Fund Members may find one under a different instrument code. As always, Fund Members should examine every document in their search to determine its effect on title and not rely upon an instrument type designation.

Conclusion

As additional counties implement PACE programs and more property owners take advantage of the ability to finance energy efficient improvements in this manner, it is anticipated that Fund Members will more frequently encounter PACE liens on real property. Fund Members should become familiar with these liens and consider counseling their buyer and seller clients concerning addressing these liens in their purchase and sale contracts. □

THE CATCH-22 OF FOREIGN SELLERS AND THE FORM 1099-S

BY LINDA MONACO, FUND LEGAL EDUCATION ATTORNEY

Transactions involving a foreign seller can bring complications for the settlement agent, but it does not need to be that way. In order to make the closing process go more smoothly, determine if the transaction is subject to Foreign Investment in Real Property Tax Act (FIRPTA) withholding. If so, withhold the proper amount, usually 15 percent, fill in the simple Internal Revenue Service (IRS) Forms 8288 and 8288-A, and submit the forms and funds to the IRS within 20 days of closing. Transactions which are subject to FIRPTA withholding still require the issuance of an IRS Form 1099-S to the seller and reporting to the IRS.

The IRS released a new Form 1099-S earlier this year. The new form has added a numbered “checkbox” for foreign sellers. The checkbox, in line number five, states “[c]heck here if the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust).” The Form 1099-S consists of three parts, Copy A for the IRS which is filed with the report, Copy B for the transferor, and Copy C for the filer.

Form 1099-S requires the taxpayer identification number (TIN). Sometimes this is not a problem; however, many foreign sellers do not have a TIN. Since 2003, all foreign buyers have been required to obtain a TIN; however, many still do not apply for it. Additionally, reporting a Form 1099-S without a TIN can subject the reporter (i.e., the settlement agent) to a minimum penalty of \$50 per form. Since one cannot report information that does not exist, the IRS

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0097
		2 Gross proceeds	2017 Proceeds From Real Estate Transactions Form 1099-S
FILER'S federal identification number	TRANSFEROR'S identification number	3 Address or legal description (including city, state, and ZIP code)	
TRANSFEROR'S name		4 Check here if the transferor received or will receive property or services as part of the consideration <input type="checkbox"/>	
Street address (including apt. no.)		5 Check here if the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) <input type="checkbox"/>	
City or town, state or province, country, and ZIP or foreign postal code		6 Buyer's part of real estate tax	
Account or escrow number (see instructions)		\$	

Form **1099-S** Cat. No. 64292E www.irs.gov/form1099s Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

For example:

On Jan. 6, 2017 at 1:38 p.m., I contacted Solo Foreignseller. I requested his TIN. I stated that this information is required to be furnished under authority of law. Mr. Foreignseller did not provide me with his TIN. The transaction closed on Jan. 31, 2017.

The IRS states that this affidavit should be attached to the transmittal document forwarding the Form 1099-S returns. However, at the current time, there is no method to submit the affidavit with magnetic or electronic Form 1099-S submissions. Therefore, the IRS further advises keeping the affidavit in the settlement agent's files and submitting the affidavit only in response to a letter from the IRS proposing a penalty.

DoubleTime users can leave the TIN blank if the TIN is unknown. Even though DoubleTime provides the following error: "missing seller tax identification number (TIN)," Fund Members may print or email the Form 1099-S without a TIN. The year-end summary of Forms 1099-S will show all errors including those with missing TINs. If TIN information has not yet been received, leave the TIN blank.

Next year, prior to the due date, generate the yearly report for filing electronically (for reporting more than 250 Forms 1099-S per year) or paper filing (for reporting 250 or fewer Forms 1099-S per year). Send this report to the IRS with Copy A of each Form 1099-S. This report will include all uncorrected errors in the Forms 1099-S. So, if a Form 1099-S has no TIN, the IRS will receive that Form 1099-S with no TIN. If the report is filed by mail and not electronically, include the affidavit with all TIN requests detailed with the report.

If the report is electronically submitted and later the IRS sends a letter with a proposed penalty for failure to include the TIN, send the IRS a copy of the TIN request letter with a copy of the affidavit prepared giving all of the details of each request.

Although it may seem the filing of a Form 1099-S for a foreign seller is a difficult path to navigate and a Catch-22, with proper planning and documentation, it will be smooth sailing.

has given some guidance in this area.

On every reportable transaction, the settlement agent should request the TIN from the seller. This request may be in person or by regular or electronic mail; the request may be part of a request for other items. There is no need for a special or separate request. The request must be made no later than the time of closing. It is better to make this request early in the transaction to allow time for the seller to also meet their FIRPTA requirements, if necessary. The closing table is not the time to find out that the seller is a foreigner subject to FIRPTA. Notate the date and time of the request in the file.

The IRS has provided a sample request:

You are required by law to provide Sally Settlementagent with your correct taxpayer identification number. If you do not provide Sally Settlementagent with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.

If the above request is in writing, add spaces for each seller's name, address, and TIN. Below that information, add a certification which should be similar to this example as provided by the IRS:

Under penalties of perjury, I certify that I am a U.S. person or U.S. resident alien and the number shown on this statement is my correct taxpayer identification number.

The details of each request, when the seller did not provide a TIN, must be included in an affidavit submitted by the settlement agent during the annual Form 1099-S reporting period. A single affidavit for all such requests for the year is all that the IRS requires at this time. The beginning of the affidavit should be the same as all other affidavits. Then, each entry will list the details of each request. The details should include the name of the foreign person who did not provide a TIN, the date and time (if available) of the request, and the date the transaction occurred.

Instructions for Form 1099-S



Department of the Treasury
Internal Revenue Service

(Rev. January 2022)

Proceeds From Real Estate Transactions

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 1099-S and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form1099S](https://www.irs.gov/Form1099S).

What's New

Continuous-use form and instructions. Form 1099-S and these instructions have been converted from an annual revision to continuous use. Both the form and instructions will be updated as needed. For the most recent version, go to [IRS.gov/Form1099S](https://www.irs.gov/Form1099S).

Reminders

In addition to these specific instructions, you should also use the current [General Instructions for Certain Information Returns](#). Those general instructions include information about the following topics.

- Who must file.
- When and where to file.
- Electronic reporting.
- Corrected and void returns.
- Statements to recipients.
- Taxpayer identification numbers (TINs).
- Backup withholding.
- Penalties.
- Other general topics.

You can get the general instructions at [IRS.gov/1099GeneralInstructions](https://www.irs.gov/1099GeneralInstructions) or go to [IRS.gov/Form1099S](https://www.irs.gov/Form1099S).

Online PDF fillable Copies B and C. To ease statement furnishing requirements, Copies B and C are fillable online in a PDF format available at [IRS.gov/Form1099S](https://www.irs.gov/Form1099S). You can complete these copies online for furnishing statements to recipients and for retaining in your own files.

Specific Instructions

File Form 1099-S, Proceeds From Real Estate Transactions, to report the sale or exchange of real estate.

Reportable Real Estate

Generally, you are required to report a transaction that consists in whole or in part of the sale or exchange for money, indebtedness, property, or services of any present or future ownership interest in any of the following.

1. Improved or unimproved land, including air space.
2. Inherently permanent structures, including any residential, commercial, or industrial building.
3. A condominium unit and its appurtenant fixtures and common elements, including land.
4. Stock in a cooperative housing corporation (as defined in section 216).
5. Any non-contingent interest in standing timber.

Sale or exchange. A sale or exchange includes any transaction properly treated as a sale or exchange for federal income tax purposes, even if the transaction is not currently

taxable. For example, a sale of a main home may be a reportable sale even though the transferor may be entitled to exclude the gain under section 121. But see [Exceptions](#), later. Also, a transfer to a corporation that qualifies for nonrecognition of gain under section 351 is a reportable exchange. In addition, a transfer under a land contract is reportable in the year in which the parties enter into the contract.

Ownership interest. An ownership interest includes fee simple interests, life estates, reversions, remainders, and perpetual easements. It also includes any previously created rights to possession or use for all or part of any particular year (for example, a leasehold, easement, or timeshare), if such rights have a remaining term of at least 30 years, including any period for which the holder may renew such rights, determined on the date of closing. For example, a preexisting leasehold on a building with an original term of 99 years and a remaining term of 35 years on the closing date is an ownership interest; however, if the remaining term is 10 years, it is not an ownership interest. An ownership interest does not include any option to acquire real estate. An ownership interest also includes any contractual interest in a sale or exchange of standing timber for a lump-sum payment that is fixed and not contingent.

Involuntary conversion. A sale of real estate under threat or imminence of seizure, requisition, or condemnation is generally a reportable transaction.

Timber. Report on Form 1099-S payments of timber royalties made under a pay-as-cut contract, reportable under section 6050N. For more information, see Announcement 90-129, 1990-48 I.R.B. 10.

Exceptions

The following is a list of transactions that are not reportable; however, you may choose to report them. If you do, you are subject to the rules in these instructions.

1. Sale or exchange of a residence (including stock in a cooperative housing corporation) for \$250,000 or less if you received an acceptable written assurance (certification) from the seller that such residence is the principal residence (within the meaning of section 121) of the seller and the full amount of the gain on such sale is excludable from gross income under section 121. If the certification includes an assurance that the seller is married, the preceding sentence shall be applied by substituting "\$500,000" for "\$250,000." If there are joint sellers, you must obtain a certification from each seller (whether married or not) or file Form 1099-S for any seller who does not make the certification. Also, the seller must include in the certification that there has been no period of nonqualified use (as that term is defined in section [121\(b\)\(5\)\(C\)](#)) after December 31, 2008, and as required by section [6045\(e\)\(5\)\(A\)\(iii\)](#), that the full amount of the gain from the sale is excludable under section 121. The certification must be signed by each seller under penalties of perjury.

A sample certification format can be found in Rev. Proc. 2007-12, 2007-4 I.R.B. 354, available at [IRS.gov/irb/2007-04_IRB#RP-2007-12.html](https://www.irs.gov/irb/2007-04_IRB#RP-2007-12.html). The sample certification does not include an assurance that there has been no period of nonqualified use and an assurance that the full amount of the gain from the sale is excludable under section 121. The seller must add the information as explained earlier.

You may get the certification any time on or before January 31 of the year after the year of sale. You may rely on the certification and not file or furnish Form 1099-S unless you know that any assurance on the certification is incorrect.

You must keep the certification for 4 years after the year of sale. You may keep the certification on paper, microfilm, microfiche, or in an electronic storage system.

You are not required to obtain the certification. However, if you do not obtain it, you must file and furnish Form 1099-S.

2. Any transaction in which the transferor is a corporation (or is considered to be a corporation under Regulations section 1.6045-4(d)(2)); a governmental unit, including a foreign government or an international organization; or an exempt volume transferor. Under this rule, if there are exempt and nonexempt transferors, you must file Form 1099-S only for the nonexempt transferor.

An exempt volume transferor is someone who sold or exchanged during the year, who expects to sell or exchange during the year, or who sold or exchanged in either of the 2 previous years at least 25 separate items of reportable real estate to at least 25 separate transferees. In addition, each item of reportable real estate must have been held, at the date of closing, or will be held, primarily for sale or resale to customers in the ordinary course of a trade or business. You are not required to report an exempt volume transferor's transactions if you receive the penalties of perjury certification required by Regulations section 1.6045-4(d)(3).

3. Any transaction that is not a sale or exchange, including a bequest, a gift (including a transaction treated as a gift under section 1041), and a financing or refinancing that is not related to the acquisition of real estate.

4. A transfer in full or partial satisfaction of a debt secured by the property. This includes a foreclosure, a transfer in lieu of foreclosure, or an abandonment.

5. A de minimis transfer for less than \$600. A transaction is de minimis if it can be determined with certainty that the total money, services, and property received or to be received is less than \$600, as measured on the closing date. For example, if a contract for sale provides for total consideration of "\$1.00 plus other valuable consideration," the transfer is not a de minimis transfer unless you can determine that the "other valuable consideration" is less than \$599, as measured on the closing date. The \$600 rule applies to the transaction as a whole, not separately to each transferor.

No reporting is required for the sale or exchange of an interest in the following types of property, provided the sale is not related to the sale or exchange of reportable real estate.

- An interest in surface or subsurface natural resources (for example, water, ores, or other natural deposits) or crops, whether or not such natural resources or crops are severed from the land. For this purpose, the terms "natural resources" and "crops" do not include standing timber. For timber royalties, see [Timber](#), earlier.
- A burial plot or vault.
- A manufactured structure used as a dwelling that is manufactured and assembled at a location different from that where it is used, but only if such structure is not affixed, on the closing date, to a foundation. This exception applies to the transfer of an unaffixed mobile home that is unrelated to the sale or exchange of reportable real estate.

Who Must File

Generally, the person responsible for closing the transaction, as explained in (1) below, is required to file Form 1099-S. If no one is responsible for closing the transaction, the person required to file Form 1099-S is explained in (2), later. However, you may

designate the person required to file Form 1099-S in a written agreement, as explained under (3), later.

1. If you are the person responsible for closing the transaction, you must file Form 1099-S. If a [Closing Disclosure](#) prescribed under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) is used and a person is listed as the settlement agent on the Closing Disclosure, the person responsible for closing the transaction is the person listed as the settlement agent on that Closing Disclosure. The Closing Disclosure combines and replaces the HUD-1 Settlement Statement and the final Truth-in-Lending (TIL) statement under the Real Estate Settlement Procedures Act (RESPA) of 1974, as amended, and the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601). The form incorporates the information provided on the Loan Estimate. A Closing Disclosure includes any amendments, variations, or substitutions that may be prescribed under Dodd-Frank if any such form discloses the transferor and transferee, the application of the proceeds, and the identity of the settlement agent or other person responsible for preparing the form.

If the Closing Disclosure is not used, or no settlement agent is listed, the person responsible for closing the transaction is the person who prepares a Closing Disclosure that identifies the transferor and transferee, reasonably identifies the real estate transferred, and describes how the proceeds are to be or were disbursed.

If no Closing Disclosure is used, or if two or more Closing Disclosures are used, the person responsible for closing the transaction is, in the following order:

- a. The transferee's attorney who is present at the delivery of either the transferee's note or a significant part of the cash proceeds to the transferor or who prepares or reviews the preparation of the documents transferring legal or equitable ownership,
- b. The transferor's attorney who is present at the delivery of either the transferee's note or a significant part of the cash proceeds to the transferor or who prepares or reviews the preparation of the documents transferring legal or equitable ownership, or
- c. The disbursing title or escrow company that is most significant in disbursing 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.

2. If no one is responsible for closing the transaction as explained in (1) above, the person responsible for filing is, in the following order: (a) the mortgage lender, (b) the transferor's broker, (c) the transferee's broker, or (d) the transferee.

For purposes of (2) above, apply the following definitions.

a. Mortgage lender means a person who lends new funds in connection with the transaction, but only if the loan is at least partially secured by the real estate. If there is more than one lender, the one who lends the most new funds is the mortgage lender. If several lenders advance equal amounts of new funds, and no other person advances a greater amount of new funds, the mortgage lender is the one who has the security interest that is most senior in priority. Amounts advanced by the transferor are not treated as new funds.

b. Transferor's broker means the broker who contracts with the transferor and who is compensated for the transaction.

c. Transferee's broker means the broker who significantly participates in the preparation of the offer to acquire the property or who presents such offer to the transferor. If there is more than one such person, the transferee's broker is the one who most significantly participates in the preparation of the acquisition

offer. If there is no such person, the one who most significantly participates in the presentation of the offer is the transferee's broker.

d. Transferee means the person who acquires the greatest interest in the property. If no one acquires the greatest interest, the transferee is the person listed first on the ownership transfer documents.

3. Designation agreement. You can enter into a written agreement at or before closing to designate who must file Form 1099-S for the transaction. The agreement will identify the person responsible for filing if such designated person signs the agreement. It is not necessary that all parties to the transaction (or that more than one party) enter into the agreement.

You may be designated in the agreement as the person who must file if you are the person responsible for closing the transaction (as explained in (1) under [Who Must File](#), earlier), the transferee's or transferor's attorney (as explained in (1) under [Who Must File](#), earlier), the title or escrow company that is most significant in disbursing gross proceeds, or the mortgage lender (as explained in (2a) under [Who Must File](#), earlier).

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 transferor and transferee, and
- Include the address and any other information necessary to identify the property.

Each person who signs the agreement must keep it for 4 years.



For each transaction, be sure that only one person is responsible for filing and that only one Form 1099-S is filed for each transferor.

Employees, Agents, and Partners

If an employee, agent, or partner, acting within the scope of such person's employment, agency, or partnership, participates in a real estate transaction, only the employer, principal, or partnership (not the employee, agent, or partner) may be the reporting person. However, the participation of a person listed on the Closing Disclosure as the settlement agent acting as an agent of another is not attributed to the principal.

Foreign Transferors

Sales or exchanges involving foreign transferors are reportable on Form 1099-S. For information on the transferee's responsibility to withhold income tax when a U.S. real property interest is acquired from a foreign person, see [Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities](#).

Multiple Transferors

For multiple transferors of the same real estate, you must file a separate Form 1099-S for each transferor. At or before closing, you must request from the transferors an allocation of the gross proceeds among the transferors. The request and the response are not required to be in writing. You must make a reasonable effort to contact all transferors of whom you have knowledge. However, you may rely on the unchallenged response of any transferor, and you need not make additional contacts with other transferors after at least one complete allocation is received (100% of gross proceeds, whether or not received in a single

response). If you receive the allocation, report gross proceeds on each Form 1099-S accordingly.

You are not required to, but you may, report gross proceeds in accordance with an allocation received after the closing date but before the due date of Form 1099-S (without extensions). However, you cannot report gross proceeds in accordance with an allocation received on or after the due date of Form 1099-S (without extensions).

If no gross proceeds are allocated to a transferor because no allocation or an incomplete allocation is received, you must report the total unallocated gross proceeds on the Form 1099-S made for that transferor. If you do not receive any allocation or you receive conflicting allocations, report on each transferor's Form 1099-S the total unallocated gross proceeds.

Spouses. If the transferors were spouses at the time of closing, who held the property as joint tenants, tenants by the entirety, tenants in common, or as community property, treat them as a single transferor. Only one Form 1099-S showing either of them as the transferor is required. You need not request an allocation of gross proceeds if spouses are the only transferors. But if you receive an uncontested allocation of gross proceeds from them, file Form 1099-S for each spouse according to the allocation. If there are other transferors, you must make a reasonable effort to contact either spouse to request an allocation.

Partnerships. If the property is transferred by a partnership, file only one Form 1099-S for the partnership, not separate Forms 1099-S for each partner.

Multiple Assets Sold

If real estate is sold or exchanged and other assets are sold or exchanged in the same transaction, report the total gross proceeds from the entire transaction on Form 1099-S.

TINs

You must request the transferor's TIN no later than the time of closing. The TIN request need not be made in a separate mailing. Rather, it may be made in person, in a mailing that includes other items, or electronically. The transferor is required to furnish his or her complete, non-truncated TIN and to certify that the TIN is correct. For U.S. persons (including U.S. resident aliens), you may request a TIN on [Form W-9, Request for Taxpayer Identification Number and Certification](#). Foreign persons may provide their TIN to you on the appropriate [Form W-8](#). See part J in the current [General Instructions for Certain Information Returns](#).

Alternatively, you may provide a written statement to the transferor similar to the following: "You are required by law to provide (insert name of person responsible for filing) with your correct taxpayer identification number. If you do not provide (insert name of person responsible for filing) with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law."

The solicitation must contain space for the name, address, and TIN of the transferor, and a place to certify under penalties of perjury that the TIN furnished is the correct TIN of the transferor. The certification must read similar to: "Under penalties of perjury, I certify that I am a U.S. person or U.S. resident alien and the number shown on this statement is my correct taxpayer identification number."

If you use a Closing Disclosure, you may provide a copy of such statement, appropriately modified to solicit the TIN, to the transferor. Keep the Form W-9, W-8, or substitute form in your records for 4 years.

Separate Charge Prohibited

You may not charge your customers a separate fee for complying with the Form 1099-S filing requirements. However,

you may take into account the cost of filing the form in setting the fees you charge your customers for services in a real estate transaction.

Statements to Transferors

If you are required to file Form 1099-S, you must furnish a statement to the transferor. Furnish a copy of Form 1099-S or an acceptable substitute statement to each transferor. For more information about the requirement to furnish a statement to the transferor, see part M in the current [General Instructions for Certain Information Returns](#).



You are not required to indicate on Form 1099-S that the transferor's (seller's) financing was federally subsidized. Also, you are not required to enter the following.

- Both total gross proceeds and the allocated gross proceeds for a multiple transferor transaction (enter either one or the other).
- An indication that the transferor may receive property or services for an obligation having a stated principal amount.
- An indication that, in connection with a contingent payment transaction, the transferor may receive gross proceeds that cannot be determined with certainty under the regulations and is not included in gross proceeds.

Truncating transferor's TIN on payee statements. Pursuant to Regulations section 301.6109-4, all filers of this form may truncate a transferor's TIN (social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN)) on payee statements. Truncation is not allowed on any documents the filer files with the IRS. A filer's TIN may not be truncated on any form. See part J in the current [General Instructions for Certain Information Returns](#).

Filer's Name, Address, and Telephone Number Box

Enter the name, address, and telephone number of the person who is filing Form 1099-S. The name and address must be the same as the filer information reported on Form 1096.

Transferor's Name and Address Box

Enter the name and address of the seller or other transferor of the real estate. If spouses are joint sellers, it is only necessary to enter one name and the TIN for that person on the form.

Account Number

The account number is required if you have multiple accounts for a recipient for whom you are filing more than one Form 1099-S. Additionally, the IRS encourages you to designate an account number for all Forms 1099-S that you file. See part L in the current [General Instructions for Certain Information Returns](#).

Box 1. Date of Closing

Enter the closing date. On a Closing Disclosure, the closing date is the Closing Disclosure date. If a Closing Disclosure is not used, the closing date is the earlier of the date title transfers or the date the economic burdens and benefits of ownership shift to the transferee.

Box 2. Gross Proceeds

Enter the gross proceeds from the sale or exchange of real estate. Gross proceeds means any cash received or to be received for the real property by or on behalf of the transferor, including the stated principal amount of a note payable to or for the benefit of the transferor and including a note or mortgage paid off at settlement. If the transferee assumes a liability of the transferor or takes the property subject to a liability, such liability

is treated as cash and is includible as part of gross proceeds. For a contingent payment transaction, include the maximum determinable proceeds. Also see [Multiple Assets Sold](#), earlier.

If you are reporting a like-kind exchange of property for which no gross proceeds are reportable, enter -0- (zero) in box 2 and enter an "X" in the checkbox in box 4.

Gross proceeds do not include the value of property or services received or to be received by, or on behalf of, the transferor, or separately stated cash received for personal property, such as draperies, rugs, or a washer and dryer.

Do not reduce gross proceeds by any expenses paid by the transferor, such as sales commissions, deed preparation, advertising, and legal expenses. If a Closing Disclosure is used for a transfer of real estate for cash and notes only, gross proceeds will generally be the contract sales price shown on that statement. If other property or services were exchanged, see the [box 4 instructions](#), later.

Contingent payment transaction. A contingent payment transaction is one in which the receipt, by or on behalf of the transferor, is subject to a contingency. The maximum determinable proceeds means the greatest amount of gross proceeds possible if all the contingencies are satisfied. If the maximum amount of gross proceeds cannot be determined with certainty, the maximum determinable proceeds are the greatest amount that can be determined with certainty.

Box 3. Address (Including City, State, and ZIP Code) or Legal Description

Enter the address of the property, including the city, state, and ZIP code. If the address does not sufficiently identify the property, also enter a legal description, such as section, lot, and block. For timber royalties, enter "Timber royalties." For lump-sum timber payments, enter "Lump-sum timber payment."

Box 4. Check Here if the Transferor Received or Will Receive Property or Services as Part of the Consideration

If the transferor 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, enter an "X" in the checkbox in box 4.

Box 5. Check Here if the Transferor Is a Foreign Person (Nonresident Alien, Foreign Partnership, Foreign Estate, or Foreign Trust)

If the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust), enter an "X" in the checkbox in box 5. See Form 8288 and its separate instructions for tax withholding requirements for properties sold by a foreign transferor.

Box 6. Buyer's Part of Real Estate Tax

For a real estate transaction involving a residence, enter the real estate tax paid in advance that is allocable to the buyer. You do not have to report an amount as allocable to the buyer for real estate taxes paid in arrears. You may use the appropriate information included on the Closing Disclosure, or comparable form, provided at closing. For example, a residence is sold in a county where the real estate tax is paid annually in advance. The seller paid real estate taxes of \$1,200 for the year in which the sale took place. The sale occurred at the end of the 9th month of the real estate tax year. Therefore, \$300 of the tax paid in advance is allocated to the buyer, by reference to the amount of real estate tax shown on the Closing Disclosure as paid by the seller in advance, and is reported in box 5. See Notice 93-4, 1993-1 C.B. 295.

☐ CORRECTED (if checked)

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0997	Proceeds From Real Estate Transactions
		2 Gross proceeds	Form 1099-S (Rev. January 2022)	
		\$	For calendar year 20 ____	
FILER'S TIN	TRANSFEROR'S TIN	3 Address (including city, state, and ZIP code) or legal description		Copy B For Transferor This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
TRANSFEROR'S name		4 Transferor received or will receive property or services as part of the consideration (if checked) ▶ <input type="checkbox"/>		
Street address (including apt. no.)		5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) ▶ <input type="checkbox"/>		
City or town, state or province, country, and ZIP or foreign postal code		6 Buyer's part of real estate tax		
Account number (see instructions)		\$		

Instructions for Transferor

For sales or exchanges of certain real estate, the person responsible for closing a real estate transaction must report the real estate proceeds to the IRS and must furnish this statement to you. To determine if you have to report the sale or exchange of your main home on your tax return, see the Instructions for Schedule D (Form 1040). If the real estate was not your main home, report the transaction on Form 4797, Form 6252, and/or the Schedule D for the appropriate income tax form. If box 4 is checked and you received or will receive like-kind property, you must file Form 8824.

Federal mortgage subsidy. You may have to recapture (pay back) all or part of a federal mortgage subsidy if **all** the following apply.

- You received a loan provided from the proceeds of a qualified mortgage bond or you received a mortgage credit certificate.
- Your original mortgage loan was provided after 1990.
- You sold or disposed of your home at a gain during the first 9 years after you received the federal mortgage subsidy.
- Your income for the year you sold or disposed of your home was over a specified amount.

This will increase your tax. See Form 8828 and Pub. 523.

Transferor's taxpayer identification number (TIN). For your protection, this form may show only the last four digits of your TIN (social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN)). However, the issuer has reported your complete TIN to the IRS.

Account number. May show an account or other unique number the filer assigned to distinguish your account.

Box 1. Shows the date of closing.

Box 2. Shows the gross proceeds from a real estate transaction, generally the sales price. Gross proceeds include cash and notes payable to you, notes assumed by the transferee (buyer), and any notes paid off at settlement. Box 2 does not include the value of other property or services you received or will receive. See *Box 4*.

Box 3. Shows the address or legal description of the property transferred.

Box 4. If checked, shows that you received or will receive services or property (other than cash or notes) as part of the consideration for the property transferred. The value of any services or property (other than cash or notes) is not included in box 2.

Box 5. If checked, shows that you are a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust).

Box 6. Shows certain real estate tax on a residence charged to the buyer at settlement. If you have already paid the real estate tax for the period that includes the sale date, subtract the amount in box 6 from the amount already paid to determine your deductible real estate tax. But if you have already deducted the real estate tax in a prior year, generally report this amount as income on the "Other income" line of Schedule 1 (Form 1040). For more information, see Pub. 523, Pub. 525, and Pub. 530.

Future developments. For the latest developments related to Form 1099-S and its instructions, such as legislation enacted after they were published, go to www.irs.gov/Form1099S.

Free File Program. Go to www.irs.gov/FreeFile to see if you qualify for no-cost online federal tax preparation, e-filing, and direct deposit or payment options.

☐ VOID ☐ CORRECTED

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0997	Proceeds From Real Estate Transactions
		2 Gross proceeds	Form 1099-S (Rev. January 2022)	
		\$	For calendar year 20 ____	
FILER'S TIN	TRANSFEROR'S TIN	3 Address (including city, state, and ZIP code) or legal description		Copy C For Filer For Privacy Act and Paperwork Reduction Act Notice, see the current General Instructions for Certain Information Returns.
TRANSFEROR'S name		4 Check here if the transferor received or will receive property or services as part of the consideration <input type="checkbox"/>		
Street address (including apt. no.)		5 Check here if the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) <input type="checkbox"/>		
City or town, state or province, country, and ZIP or foreign postal code				
Account number (see instructions)		6 Buyer's part of real estate tax \$		

Instructions for Filer

To complete Form 1099-S, use:

- The current General Instructions for Certain Information Returns, and
- The current Instructions for Form 1099-S.

To order these instructions and additional forms, go to www.irs.gov/EmployerForms.

Caution: Because paper forms are scanned during processing, you cannot file certain Forms 1096, 1097, 1098, 1099, 3921, or 5498 that you print from the IRS website.

Filing and furnishing. For filing and furnishing instructions, including due dates, and requesting filing or furnishing extensions, see the current General Instructions for Certain Information Returns.

Foreign transferors. Sales or exchanges involving foreign transferors are reportable on Form 1099-S. For information on the transferee's responsibility to withhold income tax when a U.S. real property interest is acquired from a foreign person, see Pub. 515.

Need help? If you have questions about reporting on Form 1099-S, call the information reporting customer service site toll free at 866-455-7438 or 304-263-8700 (not toll free). Persons with a hearing or speech disability with access to TTY/TDD equipment can call 304-579-4827 (not toll free).

**The
Fund**

CONCEPT

FLORIDA

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Notification of Change in Ownership or Control: DR-430

By Valerie Grandin, Fund Commercial Account Executive and Senior Underwriting Counsel

In 2007 the Florida Legislature passed amendments to Sec. 193.1556, F.S., and during its 2008 Session followed up those changes with additional modifications included within the sweeping legislation of Senate Bill 1588. Of greatest concern to Fund Member Agents and Florida real property practitioners is the provision in SB 1588 amending Sec. 193.1556, F.S., to add a requirement for notification to the property appraiser upon a change in ownership or control of non-homestead real property. Sec. 193.1554(5), F.S., defines such as change in ownership or control as “any sale, foreclosure, transfer of title or beneficial interest in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value.” This broad definition has been included in the proposed Emergency Rule implementing the statute and the current version of the Florida Department of Revenue Form DR-430 (DR-430), the mandated form for notice to the property appraiser.

If a transaction includes a conveyance by a deed or other instrument of title, such as certificate of title issued following a foreclosure judgment and sale which will be recorded with the county clerk of court, the transaction complies with the notice requirements of Sec. 193.1556, F.S. Recordation of those documents provides the property appraiser with the change of ownership and control information required in order to update the applicable tax rolls. No separate notice to the property appraiser is required. There are several other types of transactions that result in a change of ownership or control as defined in Sec. 193.1554, F.S., but do not include the recordation of a deed or document of title. It is in these scenarios that the

filing of the DR-430 is mandated in order to avoid any additional tax liability under Sec. 193.1556, F.S. The filing of the DR-430 with the applicable property appraiser will accomplish the Florida Legislature’s goals: an increase in tax roll accuracy and reduction in incidences of improper application of tax exemptions. Fla. Dept. of Rev. Emergency Rule 12DER09-01.

The notice requirement was only a small part of a sweeping bill that dealt with tax assessments, determination of millage rates, exemptions, and ad valorem tax collection following closely on the heels of the change in portability of homestead exemption tax savings for residential real property. This article will focus on the reporting requirements as set forth in Sec. 193.1556, F.S., and the subsequent development of the DR-430 and Emergency Rule 12DER09-01.

Sec. 193.1556, F.S., as amended now requires that notice be promptly given to the local property appraiser upon any change of ownership or control of the entity holding fee title to the non-homestead real property. There is no definition of the timeframe within which such notice should be served. Earlier versions of the DR-430 included a 60-day time period for such filing, but that

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reference has been stricken from the current January 2009 version. Best practices would suggest the DR-430 be executed and filed as part of standard closing procedures. Certainly, such notice must be given before the property appraiser conducts the annual property assessment or the interest and penalties of a violation may be triggered.

The statute includes strong enforcement mechanisms. The penalty for failing to give the property appraiser notification of the change in ownership or control is based on the amount of tax avoided by retaining the preferential assessment that the current owner is no longer entitled to retain. The statute gives the property appraiser the right to look back over the prior 10-year period in order to determine the total amount of taxes currently due. Sec. 193.1556, F.S., provides for interest on the unpaid tax at a rate of 15 percent per annum. In addition to the payment of back taxes and interest, Sec. 193.1556, F.S. authorizes assessment of a penalty of 50 percent of the taxes avoided.

The property appraiser is also directed to place a lien for the unpaid taxes, interest, and penalties on the subject property as well as on all property owned by the responsible person or entity in the same county. If the person or entity no longer owns property in the subject county, the statute charges the property appraiser with the obligation of recording the tax lien in other Florida counties where the former property owner holds title to any real property. Beginning Jan. 1, 2009, the property appraiser is required to record a tax lien on any property owned by a person or entity that was granted but not entitled to the property assessment limitation under Sec. 193.1554, F.S., or other tax exemption. Sec. 193.1555, F.S., Emergency Rule 12DER09-01 (Proposed) and Instructions Form DR-430, Notice of Change of Ownership or Control Non-Homestead Property (Effective January 2009).

The definition of change in ownership or control found in Sec. 193.1554(5), F.S., does list three exceptions. These enumerated exceptions do not constitute a transfer of ownership or control:

a) The transfer of title is to correct an error;

- b) The transfer is between legal and equitable title;
- c) The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to dissolution of marriage. Sec. 193.1554(5)(a-c), F.S.

Should the subject transaction not fall within one of the exceptions, the required notice should be timely given to the property appraiser through the filing of a DR- 430. These limited exceptions leave many standard transactions under the umbrella of Sec. 193.1556, F.S., and the reporting requirement it imposes. In the commercial arena, the conveyance of more than 50-percent ownership interest in a limited liability company would require notification to the property appraiser through the filing of a DR-430. This type of transaction occurs frequently as a conveyance of the ownership interest in the entity in title rather than a straight conveyance of the real property reduces liability for documentary stamp tax in the transaction.

Form DR-430 has been revised several times since its original development by the Department of Revenue in August 2008. The current form states that for each parcel of non-homestead real property where a deed has not been recorded with the county clerk of court documenting a change in ownership or control, the person or entity who acquires the parcel *must* complete such form; a transferor who does not retain an ownership interest *may* submit the form. Other scenarios in which a prudent practitioner will prepare and submit a DR-430 as part of a closing regimen for non-residential real property include increased percentage ownership in an LLC by a member to a level exceeding 50 percent; merger or corporate restructuring of a corporate entity resulting in a change in ownership of 50 percent of the stock; or an unrecorded stock purchase agreement conveying cumulative ownership exceeding 50 percent in a corporation. It is unclear from the statutes or the regulations whether the provisions apply to transfers to beneficiaries upon the death of a non-homestead property owner. Until the issue is clarified by law or regulation, a prudent practitioner should file a DR-430 when the title passes by operation of law from the deceased to beneficiaries in order to insure proper assessment and avoid any additional tax liability for unpaid taxes, interest, and penalties under Sec. 193.1556, F.S. There may also be a gap

issue even in a subsequent conveyance to a third party purchaser should the property appraiser take advantage of the lien rights afforded by the statute.

Although the statute became effective on Jul. 1, 2008, the required form for filing with the property appraiser, DR-430 Notice of Change of Ownership or Control, Non-Homestead Property, a copy of which is included with your current *Fund Concept*, was not finalized in its current form by the Florida Department of Revenue until January 2009. The Department is still in the process of finalizing its Emergency Rule implementing this revised statute. The Property Tax Oversight Program Emergency Rule 12DER09-01 should soon be final as the last deadline for comments to the current draft expired on Jan.19, 2009.

The Rule does provide that a separate DR-430 is required for each parcel of non-homestead real property that changed ownership or control. In the event of a large transaction including multiple parcels in one or more counties, a DR-430 should be prepared and filed with the applicable property appraiser for each parcel having its own parcel identification number as assigned by the property appraiser. The instructions for the DR-430 instruct the owner of a parcel to check with the prior owner in the event the current owner is not certain whether or not there has been a change in ownership or control as defined in Sec. 193.1554(5), F.S.. Best practices would be to rather contact the Department of Revenue to confirm whether or not a change of ownership or control giving rise to the filing of a DR-430 has occurred.

The validity of the tax rolls for a Florida county will be under constant review in these difficult times as the improper claims for and receipt of a tax exemption are a direct fiscal detriment to county budgets. The simplicity of the DR-430 make its completion and submission to the applicable property appraiser an easy step in a transaction which can avoid the imposition of the statute's penalties which can be costly as the interest and penalty provisions begin to run. □



IN YOUR BEST INTEREST

? TITLE Q & A's

The following questions (Q.) and answers (A.) are “live” title problems presented to and responses given by Fund staff attorneys on the insurability of titles through THE FUND.

11. ‘Bleeding’ Code Enforcement Liens

Q. *Bank of America foreclosed on Blackacre in Lee County. Bank of America also owns Whiteacre in the same county. While Bank of America was in title to Whiteacre, a Ch. 162, F.S., code violation occurred, and a code enforcement lien was recorded against Bank of America with respect to Whiteacre. Since Ch. 162, F.S., code enforcement liens constitute a lien on all real or personal property owned by the violator, when Bank of America sells Blackacre must the lien be satisfied or shown as a Schedule B policy exception?*

A. No, provided that Bank of America conveys Blackacre by warranty deed or special warranty deed without any exception or limitation for the code enforcement lien. These types of liens are sometimes called “bleeding liens” because by virtue of Ch. 162, F.S., or many local code ordinances, these liens bleed onto or attach to property that is totally unrelated to the property that is in violation. This underwriting position applies only to banks who acquire title to property where the seller bank is acting in its own capacity or as fiduciary for another bank, and the lien is assessed against the bank that is conveying non-violating property by warranty deed or special warranty deed. This position does not apply to non-bank lenders. For instance, same facts as above, except that instead of Bank of America, ABC, LLC, a lender, owns both Whiteacre and Blackacre. In that case the code enforcement lien would have to be satisfied or excepted in a Fund policy insuring Blackacre, even though there never was a code violation on Blackacre and even though ABC, LLC, conveys by warranty or special warranty deed.



CHANGE OF OWNERSHIP OR CONTROL NON-HOMESTEAD PROPERTY

DR-430
N. 11/12
Rule 12D-16.002
Florida Administrative Code
Effective 11/12

Sections 193.1554, 193.1555, and 193.1556, Florida Statutes

For non-homestead real property when a deed or other instrument has not been recorded with the clerk of court for a change of ownership or control, the owner must complete this form and send it to the property appraiser of the county where the property is located.

County _____		Date _____	
New Owner Individual or legal entity			
Owner name _____			
Address _____		Contact name _____	
		Phone _____	
Type of ownership, if not an individual <input type="checkbox"/> Corporation <input type="checkbox"/> Limited liability company <input type="checkbox"/> Limited partnership <input type="checkbox"/> General partnership or joint venture <input type="checkbox"/> Unincorporated REIT <input type="checkbox"/> Other, specify, _____ State of formation _____			
Previous Owner Individual or entity transferring ownership or transferring control or ownership of the legal entity cumulatively exceeding 50%			
Individual or legal entity name _____			
Description of Property			
Parcel ID _____		Date of sale or change of ownership (Cumulative ownership or control exceeded 50%) _____	
Physical address _____		Legal description _____	
Type of property _____			
<input type="checkbox"/> This notice covers multiple parcels. I have attached Form DR-430M		Total number of pages, including this one _____	
This notification is provided by <input type="checkbox"/> the owner of the property <input type="checkbox"/> the previous owner <input type="checkbox"/> an authorized agent of the owner <input type="checkbox"/> an authorized agent of the previous owner			
I declare I have read this document and the facts in it are true.			
_____ Signature		_____ Print name	
_____ Title, if not an individual		_____ Date	

INSTRUCTIONS

Change of Ownership or Control, Non-homestead Property

DR-430
N. 11/12
Page 2

Who should complete this form?

An owner of non-homestead property that has changed ownership or control after January 1 when the property was last assessed at just value must notify the property appraiser of the change unless a deed or other document of the change was recorded with the clerk of the court.

A change of ownership or control means:

- A sale or foreclosure,
- A transfer of legal title or beneficial title in equity to any person, or
- A cumulative transfer of control, or of ownership of more than 50%, of the legal entity that owned the property when it was last assessed at just value.

Send the completed form to the property appraiser in the county where the parcel is located. If one owner completes and sends a Form DR-430 to the property appraiser, another owner is not required to send an additional Form DR-430.

You do not need to complete Form DR-430 if:

- A deed or other instrument documenting a change of ownership of the property has been recorded with the county clerk of court.
- The transfer corrects an error.
- The transfer is between legal and equitable title.
- The transfer is between husband and wife, including a transfer to a surviving spouse or on dissolution of marriage, and the property is non-homestead, residential property under section 193.1554(1), F.S. This does not apply to non-residential property.
- For a publicly traded company, the transfer occurred through the buying and selling of shares on a public exchange. This does not apply to a merger or acquisition by another company.

What if I have more than one parcel that has changed ownership or control?

You can submit Form DR-430M as an attachment to this form to report multiple parcels. Be sure to identify each page with the name of the owner and date from page one of Form DR-430. Send a copy of the completed forms to the property appraiser of each county where you have listed a parcel. Form DR-430M is posted on the Department of Revenue's website at <http://floridarevenue.com/property/Pages/Forms.aspx>.

Reference: Rule 12D-8.00659, Florida Administrative Code

Interest and Penalties

Owners who receive an assessment to which they are not entitled are subject to:

- Any taxes avoided plus 15% interest each year, and
- A penalty of 50% of the taxes avoided.

The property appraiser is required to record a tax lien on any property owned by a person or entity that was granted, but not entitled to, the property assessment limitation under s.193.1554 or s.193.1555, F.S.

Contact information and mailing addresses for all Florida property appraisers are on Revenue's web site at: <http://floridarevenue.com/property/Pages/LocalOfficials.aspx>.

Non-Foreign Certification By Individual Transferor

(Seller's FIRPTA Affidavit)

Transferor:
Transferee:
Property:
Closing Date:

Before me, the undersigned authority, personally appeared the person(s) named in paragraph 2(b) below who, after being duly sworn, stated as follows:

1. This certificate is to inform the transferee that withholding Federal Income Tax is not required, upon the sale of the following described real property:

2. The undersigned Transferor certifies and declares as follows:
 - a. I am not a foreign person for purposes of United States income taxation, and am not subject to the tax withholding requirements of Section 1445 of the Internal Revenue Code of 1954, as amended.
 - b. My United States taxpayer identification or Social Security number is:

 - c. My home address is:

 - d. There are no other persons who have an ownership interest in the above described property other than those persons listed in paragraph 2(b) above.
3. The undersigned hereby further certifies and declares:
 - a. I understand the purchaser of the described property intends to rely on the foregoing representations in connection with the United States Foreign Investment in Real Property Tax Act. (FIRPTA).
 - b. I understand this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statements contained in this certification may be punished by fine, imprisonment or both.

Under penalties of perjury, I state that this declaration was carefully read and is true and correct.

(seller signature)

(seller signature)

State of _____
County of _____

The foregoing instrument was sworn to and subscribed before me by means of [] physical presence or [] online notarization this _____ day of _____, 20____, by _____ who [] is personally known or [] has produced _____ as identification.

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

IRS Residency Certification

(Buyer's FIRPTA Affidavit)

Transferor:
Transferee:
Property:
Closing Date:

The undersigned ("Affiant") being duly sworn on oath, deposes, states, represents, warrants, confirms and says that:

Transferee understands that Section 1445 of the Internal Revenue Code provides that a Transferee (Buyer) of a U.S. Real Property Interest must withhold tax if the Transferor (Seller) is a foreign person. However, no withholding is required under Section 1445(a) of the Internal Revenue Code if an individual Transferee acquires a U.S. Real Property Interest for use as a residence and the amount realized on the transaction is THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) or less. Transferee hereby certifies as follows:

1. Transferee is purchasing that certain real property located in _____ **County**, which is more particularly described as follows:
2. Transferee has definite plans to reside on these premises for at least fifty percent (50%) of the number of days that the property is in use, during each of the first two (2), twelve (12) month periods following the date of this transfer.
3. The amount realized (the "Sales Price") of this residence does not exceed THREE HUNDRED THOUSAND DOLLARS (\$300,000.00).

It is further understood that this Certificate may be disclosed to the Internal Revenue Service, and that any false statement contained herein could be punished by fine, imprisonment or both. Under penalties of perjury Transferee declares that Transferee has examined carefully this certification, and to the best of Transferee's knowledge and belief, it is true, correct and complete.

Affiant is familiar with the nature of an oath and with the penalties for falsely swearing to statements made in an instrument of this nature. This affidavit is given to induce _____ (Closing Agent) to conduct the closing on the subject property with the knowledge that said closing agent is relying upon the statements, representations and other matters set forth herein. Buyer hereby holds Closing Agent harmless and fully indemnifies same with respect to the matters set forth herein. "Affiant," "Seller," "Transferor," "Buyer," and "Transferee" include singular or plural as context so requires or admits.

Under penalties of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.

(buyer signature)

(buyer signature)

State of _____
County of _____

The foregoing instrument was sworn to and subscribed before me by means of [] physical presence or [] online notarization this _____ day of _____, 20____, by _____ who [] is personally known or [] has produced _____ as identification.

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____