



## IRS Requires Reporting of Cooperative Commissions

The Internal Revenue Service (“IRS”) requires that listing brokers who pay a cooperative commission in excess of \$600 to an individual who is not their employee must complete a Form 1099-MISC. While this is not a new law, it has come to NAR’s attention that not all real estate professionals are aware of this requirement. Below is a brief description of this issue and links to the necessary forms.

### IRS Requirements

The IRS requires individuals that:

1. pay compensation of \$600 or more to
2. an individual who is not an employee
3. for services provided
4. during the course of the payor’s trade or business

to complete Box 7 - Nonemployee Compensation on Form 1099-MISC, give Copy B of the form to the individual who received the compensation, and file Copy A with the IRS. “Nonemployee compensation” includes fees, commissions, prizes, and awards, and so would include cooperative commissions and referral fees paid by real estate professionals because these payments are made during the course of their trade or business to nonemployees.

These filing requirements exist even if the listing broker is not directly paying the cooperative commission to the other broker. So, if the cooperative commission is paid by the escrow agent to the other broker, the listing broker may still need to file a 1099-MISC. This is because the funds constituting the cooperative commission are drawn from the listing broker’s portion of the commission and so the payment is technically made by the listing broker.

This requirement only applies to payments made to **individuals**, and does not apply when the payments are made to corporations. Listing brokers should still make it part of their business practice to obtain a completed Form W-9 from anyone to whom it pays a commission, whether it be an individual or a corporation. Property owners do not need to complete a 1099-MISC for the commissions they pay to real estate professionals because this activity is not part of their trade or business.

Here is an illustrative example:

Joe Seller lists his home for sale with real estate broker Don Listbroker. Listbroker places the listing into a multiple listing service and offers a cooperative commission to any MLS participant who brings him a buyer that successfully purchases the property. A client of another broker’s salesperson, Julie Buyerep, made an offer to purchase Seller’s home. Seller accepts the offer, and the transaction closes. At closing, the escrow agent makes commission payments to both Listbroker and Buyerep’s principal broker, Don Broker. Here is who is required to report commissions to the IRS:

- Listbroker has an obligation to report the commission payments made to Broker, even though Broker received the commission check from the escrow agent
- Broker has an obligation to report the commission amounts that he pays to Buyerep
- Neither Seller nor the buyer have any obligation to report the commissions that their real estate representatives received

## Reporting Deadlines and Other Information

For the 2015 tax year, all 1099-MISC Copy B forms must be sent to payment recipients by February 1, 2016. The IRS must receive Copy A by February 29, 2016. If the taxpayer files electronically, they have until March 31, 2016 to file Copy A. (Note: There are certain software requirements for filing electronically with the IRS.) Below are links to the IRS's instructions for completing Form 1099-MISC and also the Form itself.

- [Form 1099-MISC - Instructions](#)
- [Form 1099-MISC - Form](#)

In order to complete the 1099-MISC, a taxpayer needs to obtain certain information from the recipient, such as a social security number or an employer identification number. Brokers should obtain this information by giving Form W-9 to every broker to whom it pays cooperative commissions (or causes to be paid) and request that the cooperating brokers return a completed Form W-9 to the taxpayer. This form will give the taxpayer sufficient information to complete the 1099-MISC and will also inform the taxpayer about whether the cooperating broker is an individual or a corporation.

Remember, if the cooperative commission is paid to a corporation, the taxpayer does not need to file a Form 1099-MISC. However, it is recommended that the taxpayer make it part of its risk management policies to obtain the W-9 from all cooperating brokers, in order to demonstrate that it verified the corporate status of the cooperative broker. If the cooperating broker refuses to return the W-9, the taxpayer can still verify the corporate status of the cooperating broker by checking its secretary of state's website.

[IRS.gov - Form W-9 and accompanying instructions](#)

## Steps to Take If W-9 Is Not Completed

The W-9 should be in hand before the commission is paid. If not, then the IRS rules specify that the payor (here, the listing broker) should withhold 28% of the payment as backup withholding.

If the W-9 was not obtained, then the listing broker should attempt to obtain a copy of the W-9 from the cooperating broker, requesting a completed form be returned to the listing broker within a week. If the W-9 is not returned in a week, the listing broker should send another letter to the cooperating broker via certified mail. In this letter, the listing broker should inform the cooperating broker that if the cooperating broker refuses to provide a tax ID number, the listing broker will inform the IRS that the cooperating broker refused to provide this information and this could lead to an audit of the cooperating broker. If you still do not receive the W-9, file the Form 1099-MISC and write in the field for the cooperating broker's tax ID number "refused to provide."

You should retain all of the backup information regarding your efforts to obtain the tax ID number from the cooperating broker.

TO COMPLY WITH CERTAIN U.S. TREASURY REGULATIONS, WE INFORM YOU THAT, UNLESS EXPRESSLY STATED OTHERWISE, ANY U.S. FEDERAL TAX ADVICE CONTAINED IN THE TEXT OF THIS COMMUNICATION, IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY PERSON FOR THE PURPOSE OF AVOIDING ANY PENALTIES THAT MAY BE IMPOSED UNDER THE INTERNAL REVENUE CODE.



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