



YOU never know who you are dealing with

By Lisa A. Tyler

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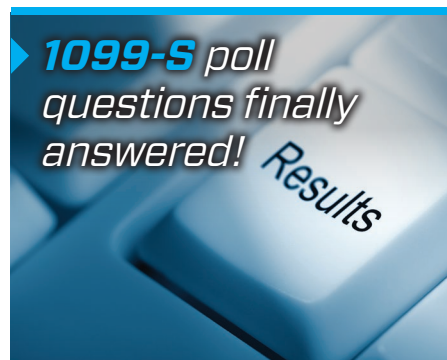
Settlement agents often put themselves and their colleagues in harm's way unknowingly. Sonya Washington, Closing Agent for Cannaday Abstract & Title Co., Inc. in Clinton, Arkansas, was working on an unusual transaction. Read about the transaction in the story entitled "ON parole" to discover who Sonya was really dealing with.

Wondering if your answers to last year's questions regarding 1099-S reporting were accurate? Find out by reading "1099-S

poll questions finally answered!" You will discover the correct answers to all 12 questions, as well as how you did compared to your peers.

A notary public is a public official who acts as the unbiased, third-party witness to the identity and signature of the person who comes before the notary for a specific purpose. The practice dates back to ancient Roman times when few people were taught to read and write. A notarius was appointed as a public official to create written documents of agreement or wills, and hold them for safekeeping. Read more in the "HISTORY of notaries."

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Sonya Washington, Closing Agent for Cannaday Abstract & Title Co., Inc. in Clinton, Arkansas, called her buyer a few days prior to closing. She gave him the amount needed for closing, so he could obtain a cashier's check in the amount of \$118,000.

The buyer told Sonya he already had a cashier's check from someone else made out to himself, but he would go to the bank to have the check made payable to her Company. A few days later she called the buyer and set the closing for Friday, October 28, 2016 at 10 a.m.

The day of the closing the seller showed up at Sonya's office, but the buyer did not. The seller's real estate agent called and said the buyer was not able to make the appointment, but would be at Sonya's office later that day. The seller left her office and Sonya called the buyer.

The buyer told her he was working in Tennessee, would be meeting a guy in Little Rock, Arkansas, to pick up the cashier's check and would be at Sonya's office by 5 p.m. Sonya called the seller's real estate agent; he and the seller returned to her office to sign the seller's closing documents. The buyer did not make it to her office by 5 p.m. on Friday. Instead, the buyer called and asked to sign at 8:30 a.m. on Monday morning.

On Monday, October 31, 2016 at 8:30 a.m. Sonya was set to meet with the buyer, but again he did not show. The seller's real estate agent called Sonya and said the buyer told him he had hit a deer over the weekend, and was in Jonesboro, Arkansas, having his car fixed.

The buyer said he would be at Sonya's office at 11 a.m. At 11:30 a.m. the real estate agent called back and said the buyer had called again. His car was overheating and he had to turn around and head back to Jonesboro to have it fixed. He promised to show up the next day by 8:30 a.m.

On Tuesday, November 1, 2016 at 8:30 a.m. the seller's real estate agent waited with Sonya for the buyer to arrive. When the buyer showed up he said he was sorry but he just realized he did not have the cashier's check. He said he left it at home in his briefcase. The buyer signed his closing documents, said he would grab the check from home and be back in 10 minutes.

An hour later, the buyer called Sonya and said when he got home his partner had gone to work using his car with the briefcase inside. He said he would meet his partner in Conway, Arkansas, get the briefcase and come directly to Sonya's office with the check.

The buyer called back at noon to say he had recovered the briefcase, but the check was not inside.

The briefcase with the check was actually in another car located at his son's house in Jonesboro. Sonya said she could not continue holding documents for a closing that was not going to happen, and that the buyer needed to contact the seller and his agent to extend the closing. The seller called Sonya and said he was extremely frustrated with the buyer, but the buyer had assured him he would be at Sonya's office with the funds in hand at 8:30 a.m. on Wednesday, November 2, 2016.

At 10 a.m. on Wednesday, November 2, 2016, Sonya called the listing agent and told him the buyer did not show up at her office. The listing agent tried to call the buyer, he would not answer the phone.

The buyer did respond via text saying he had run into more problems retrieving the check, because he arrived at his son's home and his son was not there. He had to wait for him to retrieve the check, but was now on his way to Sonya's office.

At 3:10 p.m., the buyer called Sonya and said he was 10 minutes from the office. He showed up at 3:30 p.m. and handed her the cashier's check. The check was drawn on a local bank, but it did not look like the cashier's checks they typically issued. Sonya held the check up to view the watermark. There was no watermark!

Sonya told the buyer she needed to verify the check was validly issued. She called the bank but they were unable to verify the check was issued by them; they had no record of the check number.

Sonya asked the buyer where he got the check. He said from a man that he did some work for in Little Rock. Sonya dialed the Little Rock branch; they too said no cashier's check was issued with that number. Sonya also provided the check to the branch office across the street.

The bank teller confirmed the check was counterfeit and then called the police. The police met Sonya at her office and arrested the buyer for trying to pass off a counterfeit check.

Two days later as Sonya and her colleagues were leaving the office for the weekend, they noticed two people watching them from the parking lot across the street. Sonya called the police, who identified the two people as the buyer's wife and business partner, and told them to leave town. Luckily, they vacated the seller's property and left town.

The local newspaper featured the story and stated a background check on the buyer showed that he was on active parole in Tennessee for armed bank robbery and had been sentenced to 35 years! The article said he had even escaped from prison at one point.



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1099-S poll questions finally answered!

Beginning in January 2016, we discussed different facets of incorrect 1099-S reporting each month. We published 12 poll questions to test your knowledge of 1099-S reporting requirements. Here are the results:

JANUARY: Which of the following transaction types are automatically exempt from 1099-S filing? (Select all that apply):

- A. Deed in Lieu: 20% of you selected this option
- B. Refinance: 82% of you selected this option
- C. Stock in a cooperative housing corporation: 18% of you selected this option
- D. Gift transaction: 26% of you selected this option

A majority of the readers selected one correct answer. Only a small percentage, however, selected all the correct answers: **A, B and D**. The IRS requires every transaction be reported unless an exemption applies. Exemptions include a deed in lieu of foreclosure, refinances or a gift transaction. It is important to remember reporting a transaction does not create a tax liability for the seller. For a complete list of exempt transactions view the 1099-S instructions at www.irs.gov. In all cases, the settlement agent has the right to report the sale even if an exception applies.

FEBRUARY: An exempt volume transferor is someone who expects to sell or exchange during the year at least _____ separate items of reportable real estate.

If you entered **25**, you were correct. Per the IRS, an exempt volume seller 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 two previous years at least 25 separate items of reportable real estate to at least 25 separate buyers. To qualify for this exemption the seller must certify for this under penalty of perjury.

MARCH: If the seller refuses to provide you with their U.S. Taxpayer Identification Number (TIN), you should:

- A. Close without filing a 1099-S: 1% of you selected this option
- B. Close, file a 1099-S indicating the seller refused to provide their TIN: 56% of you selected this option
- C. Refuse to close: 40% of you selected this option
- D. Immediately call the IRS: 3% of you selected this option

A majority of you selected the correct answer: **B**. If a customer, who has a U.S. TIN, refuses to complete or sign the 1099-S Substitute form you can still proceed and close. Provide the seller with a refusal letter notifying them a 1099-S will be filed without a U.S. TIN and the IRS will be notified the seller refused. It is important to differentiate between sellers who do not have a U.S. TIN with sellers who refuse to provide their TIN. A sale involving a seller without a U.S. TIN still needs to be reported. The refusal letter, however, is not needed.

APRIL: If the seller is a limited liability company (LLC), but the LLC is disregarded for tax purposes and the member of the LLC is a corporation, who completes the Substitute 1099-S?

- A. The managing member of the LLC: 34% of you selected this option
- B. Both the LLC and corporation: 13% of you selected this option
- C. No one. Corporations are exempt from 1099-S filing: 42% of you selected this option
- D. What is a disregarded entity?: 11% of you selected this option

42% of you selected the correct answer: **C**. A disregarded entity is an entity such as an LLC, trust or estate that is not treated as a separate entity from the sole owner for tax purposes. This means the disregarded entity's tax return is reported in the name of the sole owner of the LLC using its TIN. In this instance, the LLC is wholly owned by a corporation and since the LLC is disregarded, no reporting is required as corporations are exempt from 1099-S reporting.

MAY: How many different 1099 forms are there?

- A. Just one, the 1099-S: 45% of you selected this option
- B. 8: 28% of you selected this option
- C. 13: 7% of you selected this option
- D. 17: 20% of you selected this option

Only 20% got the correct answer of **17**, answer **D**. A complete list of 1099 forms can be found at <https://www.irs.gov/pub/irs-pdf/i1099gi.pdf>. Each form is used to report different types of incomes and payments each with varying requirements which is why it is important settlement agents do not accept more responsibility by agreeing to vague requirements lenders or principals may include in their instructions to the settlement agent.

JUNE: The IRS defines an ownership interest which is reportable on Form 1099-S as (Select all that apply):

- A. Fee simple interests: 94% of you selected this option
- B. Life estates: 37% of you selected this option
- C. An option to purchase real estate: 24% of you selected this option
- D. Perpetual easements: 25% of you selected this option

The correct answers are **A, B and D**. Only an interest which has vested in the property is considered a sale and thus reportable on form 1099-S. Options to purchase do not have vested interests in the property. An ownership interest includes fee simple interests, life estates, reversions, remainders and perpetual easements. It also includes leaseholds, easements or timeshares if such rights have a remaining term of at least 30 years.

JULY: Which of the following sellers are automatically exempt from 1099-S reporting? (Select all that apply):

- A. A corporation: 70% of you selected this option
- B. A bank which is a National Association: 51% of you selected this option
- C. A limited liability company: 18% of you selected this option
- D. Department of Veteran Affairs: 73% of you selected this option
- E. Department of Housing and Urban Development: 74% of you selected this option

Corporations (**A**), governmental agencies (**D and E**) and international organizations are automatically exempt. However, the answer which seemed to confuse most was **B**, a bank designated as a National Association. This is not a type of entity, it merely distinguishes their affiliation as a bank. Also, a limited liability company is not a corporation. For a complete list of all exempt organizations please see: <https://www.irs.gov/pub/irs-pdf/i1099s.pdf>.

[Continued on pg 4]

[1099-S poll questions finally answered! - continued]

AUGUST: A disregarded entity is a legally formed entity in good standing but does not have a U.S. TIN, such as a single member limited liability company.

- True: 61% of you selected this option
- False: 39% of you selected this option

The correct answer is **True**. An entity may be legally formed, but not file tax returns. Instead, the managing member or trustee can report the tax liability of the entity on their personal tax returns.

SEPTEMBER: If sellers are married, then only one of them should complete the Certification for No Information Reporting.

- True: 11% of you selected this option
- False: 89% of you selected this option

The majority selected the correct answer, **False**. Regardless of their marital status each and every seller claiming this exemption has to complete and sign their own form. Exemptions are handled on an individual basis and each owner of record must qualify to be exempt.

OCTOBER: If your seller is foreign, what form do you use to solicit their U.S. TIN for 1099-S reporting purposes?

- 1099-S Solicitation: 23% of you selected this option
- Certification for No Information Reporting: 7% of you selected this option
- None, they are exempt: 8% of you selected this option
- W-8BEN: 62% of you selected this option

The **W-8BEN (answer D)** is the correct form used to solicit a foreign person's Individual Taxpayer Identification Number. A foreign seller cannot sign the 1099-S Solicitation since the IRS requires the signer to state under penalty of perjury, "I am a U.S. Person or resident alien."

NOVEMBER: How much is the penalty for failing to file a 1099-S?

- \$50: 14% of you selected this option
- \$250: 30% of you selected this option
- \$150 6% of you selected this option
- \$500 50% of you selected this option

The IRS assesses a **\$250 (answer B)** penalty for late remittance and typos. Willful disregard imposes a penalty of \$10,000 per instance. It is important to always report unless there is a clear exemption.

DECEMBER: A transfer of a leasehold interest is reportable as long as:

- There are at least 30 years remaining on the lease: 14% of you selected this option
- A memorandum of lease is recorded: 50% of you selected this option
- There are at least 10 years remaining on the lease: 29% of you selected this option
- The lessor wants you to report the transfer: 7% of you selected this option

A leasehold, easement or timeshare may still be considered a transfer of ownership and thus reportable if **there is at least 30 years remaining on the term (answer A)**. Any lease with less than 30 years left does not qualify as a sale and thus is not reportable.

HISTORY of notaries

A notary public is a public official who acts as the unbiased, third-party witness to the identity and signature of the person who comes before the notary for a specific purpose. The practice dates back to ancient Roman times when few people were taught to read and write. A notarius was appointed as a public official to create written documents of agreement or wills, and hold them for safekeeping.

Wax seals with individualized engravings or symbols were used as signatures at the end of the written agreements. In later centuries, ribbons were woven into multiple page documents to tie the pages together. Seals were placed over the knots to ensure no pages were added or removed. This was the birth of the notary seal and certificate.

In colonial America, persons of high moral character were appointed as public notaries to certify and keep safe documents of shipping and bills of lading for transatlantic shipping. Today notary publics play an important role in real estate transactions. A role our Company relies on since verifying the identity of sellers and borrowers is key to a successful closing. Every month in 2017, we will feature an article which includes tips and tricks for commissioned notaries. Take this month's notary quiz in the HTML version and find out the answer in an upcoming edition. Enjoy!

