

INSTRUCTIONS FOR DR 1083

In general. With certain exceptions, sales of Colorado real property valued of \$100,000 or more, made by nonresidents of Colorado will be subject to a withholding tax in anticipation of the Colorado income tax that will be due on the gain from the sale.

A transferor who is an individual, estate, or trust will be subject to the withholding tax if either the federal Form 1099-S to be filed with the Internal Revenue Service to report the transaction or the authorization for the disbursement of the funds resulting from the transaction shows a non-Colorado address for the transferor.

A corporate transferor will be subject to the withholding tax if immediately after the transfer of the title to the Colorado real property interest, it has not permanent place of business in Colorado. A corporation will be deemed to have a permanent place of business in Colorado if it is a Colorado domestic corporation, if it is qualified by law to transact business in Colorado, or if it maintains and staffs a permanent office in Colorado.

Amount of withholding. The withholding shall be made by the title insurance company or its authorized agent or any attorney, bank, savings, and loan association, savings bank, corporation, partnership, association, joint stock company, trust, unincorporated organization or any combination thereof acting separately or in concert that provides closing and settlement services. The amount to be withheld shall be the lesser of: (a) two percent of the selling price of the property interest or, (b) the net proceeds that would otherwise be due to the transferor as shown on the settlement statement.

“Closing and settlement services” means services for the benefit of all necessary parties in connection with the sale, leasing, encumbering, mortgaging, creating a secured interest in and to the real property, and the receipt and disbursement of money in connection with any sale, lease, encumbrance, mortgage, or deed of trust. [10-11-102 (3.5), CRS.]

Exceptions to Withholding. Withholding shall not be made when:

- the selling price of the property is not more than \$100,000; or
- the transferor is an individual, estate, or trust and both the Form 1099-S and the authorization for disbursement of funds show a Colorado address for the transferor; or
- the transferee is a bank or corporate beneficiary under a mortgage or beneficiary under deed of trust and the Colorado real property is acquired in judicial or nonjudicial foreclosure of by deed in lieu of foreclosure; or
- the transferor is a corporation incorporated under Colorado law or currently registered with the Secretary of State's Office as authorized to transact business in Colorado; or
- the title insurance company or the person providing the closing and settlement services, in good faith, relies upon a written affirmation executed by the transferor, certifying under the penalty of perjury one of the following:
 - that the transferor, if an individual, estate, or trust, is a resident of Colorado;
 - that the transferor, if a corporation, has a permanent place of business in Colorado;
 - that the transferor is a partnership as defined in section 761(a) of the Internal Revenue Code required to file an annual federal return of income under section 6031(a) of the Internal revenue Code;
 - that the Colorado real property being conveyed is the principal residence of the transferor which could qualify for the exclusion of gain provisions of section 121 of the Internal Revenue Code;
 - that the transferor will not owe Colorado income tax reasonably estimated to be due from the inclusion of the actual gain required to be recognized on the transaction in the gross income of the transferor.

Normally Colorado tax will be due on any transaction upon which gain will be recognized for federal income tax purposes. Gain will normally be recognized for federal income tax purposes any time the selling price of the property exceeds the total of the taxpayer's adjusted basis in the property plus the expenses incurred in the sale of the property. The taxpayer's adjusted basis of the property will normally be the taxpayer's total investment in the property minus any depreciation thereon he has previously claimed for federal income tax purposes.

Partnership as Transferor. Sales of real property interests by organizations recognized as partnerships for federal income tax purposes and required to file annual federal partnership returns of income will not be subject to the Colorado withholding tax. This exception will not apply to joint ownerships of property which are not recognized as partnerships for federal income tax purposes. The sale of property jointly owned by a husband and wife, for example, is a sale by two individuals, not a sale by a partnership, and not exempt from withholding tax.

Completion of DR 1083. DR 1083 must be completed and submitted to the Department of Revenue with respect to sales of Colorado real property if Colorado tax was withheld from the net proceeds from the sale, or if Colorado tax would have been withheld but for the signing of an affirmation by the transferor.

Information. Forms and additional information are available through the Tax Information Index at www.taxcolorado.com or you can call (303)238-SERV (7378) for information.

Line 1. Enter name and address of the transferor. In the case of multiple transferors of the same real property, a separate DR 1083 must be filed for each transferor except that if the transferors are husband and wife at the time of closing who held the property as joint tenants, tenants by the entirety, tenants in common, or as community property, and they are both subject to withholding or both exempt from withholding, treat them as a single transferor and list both of their names on line 1. Do not list husband and wife as one transferor if they do not choose to be listed as one transferor. Use the same address as is used on the federal FORM 1099-S if one is required to be filed. Otherwise, use the most current address available.

Line 3. If both husband and wife are listed on line 1, show both Social Security Numbers on line 3.

Line 5. Type of property sold would be residential, rental, commercial, unimproved land, farm, etc.

Line 6. Address or legal description would be the same as shown on federal FORM 1099-S.

Line 7. Date of closing would be the same as shown on Form 1099-S.

Line 8. Selling price of the property is the contract sales price. Selling price means the sum of:

- the cash paid or to be paid but not including interest;
- the fair market value of other property transferred or to be transferred; and
- the outstanding amount of any liability assumed by the transferee to which the Colorado real property interest is subject immediately before and after the transfer.

Line 9. Selling price of the transferor's interest is that part of the selling price entered on line 8 apportioned to the ownership interest of the transferor for whom the DR 1083 is being prepared. For example, if the property was owned 60% by Smith and 40% by Jones and the property was sold for \$150,000, the DR 1083 being prepared for Jones would show \$150,000 on line 8 and \$60,000 on line 9. Note that it is the amount on line 8 that determines whether or not the \$100,000 withholding tax threshold is met, not the amount entered on line 9, but the withholding is to be computed on the amount on line 9 if it is smaller than the amount on line 8.

Line 10 and 11. If Colorado tax is withheld on the transaction, check the box on line 10 and show the amount withheld on line 11.

Line 11. If Colorado tax is being withheld on the transfer, the title insurance company or the person providing the closing and settlement services must complete DR 1079 which is the form used to transmit the tax withheld to the Colorado Department of Revenue.

Line 12. If Colorado tax is not withheld on the transaction, check appropriate box on line 12.

Due date and penalty. The title insurance company or other person providing the closing and settlement services must file DR 1083, together with DR 1079 if Colorado tax was withheld on the transfer, with the Colorado Department of Revenue within 30 days of the closing date of the transaction.

Any title insurance company or its authorized agent which is required to withhold any amount pursuant to section 39-22-604.5, C.R.S. (relating to withholding on transfers of Colorado real property interests) and fails to do so shall be liable for the greater of five hundred dollars or ten percent of the amount required to be withheld, not to exceed twenty-five hundred dollars.