

# 1099-A & C Filing

Presented

by

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# Timeline

## Scenario #1 –1099-A Only

Bank takes control of property  
Jun 2010

1099-A  
Jan 2011  
FMV = \$90K

No "C" Required  
Exception to filing or sale greater than Loan Balance

## Scenario #2 –1099-A & 1099-C

Bank takes control of property  
Jun 2010

1099-A  
Jan 2011  
FMV = \$90K

Sale  
Jan 2011  
Proceeds = \$80K

1099-C  
Jan 2012  
Debt Forgiveness = \$10K

## Scenario #3 –1099-C Only

Jun 2010  
Foreclosure  
Bankruptcy  
Deed in Lieu

Sale  
Dec 2010  
FMV=\$90K  
Proceeds = \$80K

1099-C  
Jan 2011  
Debt Forgiveness = \$10K

100K Loan  
Jan 1, 2005

# When to File 1099-A

For each borrower you lend money to in connection with your trade or business and in full or partial satisfaction of the debt:

1. Bank acquires property securing a loan
2. Bank knows the property is abandoned
3. Third party acquires property at a foreclosure or execution sale
4. Acquisition of the property by another lender which terminates, impairs or reduces the bank's security interest in the property

# When to File 1099-A



# When to File 1099-A



# When to File 1099-A

Borrower  
Default  
Loan=\$100K

Third party  
acquires property  
at a foreclosure or  
execution sale  
Jun 2010

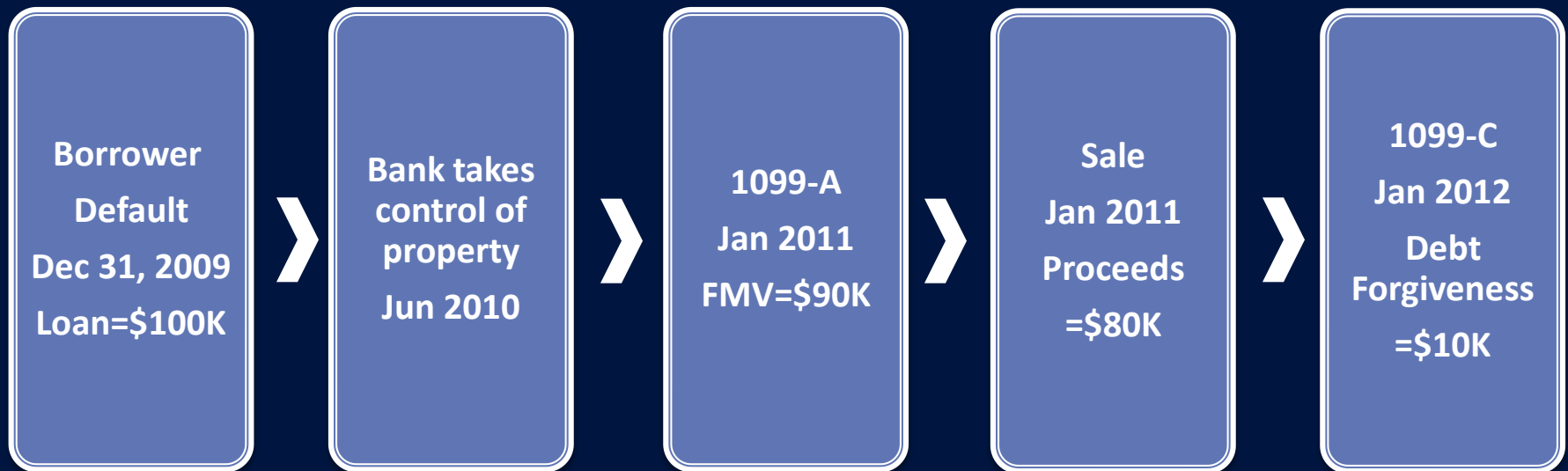
1099-A  
Jan 2011  
FMV=\$90K

# When to File 1099-A



# When to File forms 1099 A & C

- Filing form 1099-A is sufficient unless, during the same calendar year, the bank also cancels debt secured by the property





# When to File 1099-C

- File a 1099-C where
  - \$600 or more in debt
  - Secured by the property
  - Is discharged or deemed to be discharged based on one of the eight identifiable events listed in Treasury Regulation § 1.6050P-1(b)(2).

# Eight Identifiable Events

1. Discharge of debt in bankruptcy;
2. Debt is rendered unenforceable in a foreclosure, receivership of similar federal court or state court proceeding;
3. Expiration of the statute of limitations on collection, filing a claim, or filing a deficiency judgment proceeding;
4. Bank's election of foreclosure remedies which by statute prohibit collection of the deficiency;
5. Debt is rendered unenforceable in a probate or similar proceeding;
6. Agreement between Bank and borrower to discharge debt at less than full value (deed in lieu);
7. Decision by the Bank or application of a defined policy of the Bank to discontinue collection activity and discharge the debt;
8. Expiration of the "non-payment testing period" described in Regulation Section 1.6050P-1(b)(2)(iv), which creates a rebuttable presumption that debt has been cancelled where the bank has not received a payment on the debt at any time during the 36 months ending at the close of the calendar year.
  - The 36 month period is increased by any period during which the Bank was precluded from engaging in collection activity by a stay in bankruptcy or a similar prohibition on collection under state or local law. The Bank can rebut the non-payment testing period presumption of cancellation by engaging in significant, bona fide collection activity at any time during the calendar year, or where facts and circumstances existing on January 31 of the following calendar year show that the debt has not been cancelled.

# When to File 1099-C



# Accepting Payments on Loan After 1099-C Issued

- Debtor can refute the validity of the 1099-C
- Issue with charge-off v formal discharge
  - Creditor must be on notice of discharge
  - Contact attorney to comply with “formal discharge” rules

# When You Do Not Need to File 1099-C

- Bankruptcy of debtor - unless the debt was incurred for business or investment purposes
- Interest - you can optionally show separately in box 3
- Non-principal amounts
- Foreign debtors
- Related parties
- Release of a debtor- as long as the remaining debtors are liable for the full unpaid amount
- Guarantor or surety
  - Guarantor is not a debtor for purposes of filing Form 1099-C even if demand for payment is made.
- Seller financing (for non-banks)

# Fair Market Value Rules

- Third party's winning bid at a trustee's sale
- Net proceeds from an auction sale of personal property (*Exception: No 1099 where held solely for personal use*)
- Appraised value
- Foreclosure credit bid (unless there is clear and convincing evidence to use appraised value)

# Appraised Value v Credit Bid

- General Rules:
  - Credit bid if there is a foreclosure, execution or other sale
  - Appraised value if deed in lieu or abandonment
  - Clear and convincing evidence can change the answer
    - Appraisal is arguably clear and convincing evidence and can be used instead of credit bid and would not give rise to a debtor challenge since it is objective “evidence” of the properties true value

# Penalties for Non-Compliance

- Failure to file correct information returns by due date (Sec 6721)
  - \$30, \$60 or \$100 per form depending on when filed
- Failure to furnish correct payee statements
  - If no “reasonable cause”
  - Fail to provide statements by Jan 31
  - Fail to include all information required
  - Include incorrect information
  - \$30, \$60 or \$100 per form depending on when filed



# Questions?

# Thank You!

**Additional Questions? Please contact us:**

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