

CONDOMINIUM & HOMEOWNER ASSOCIATION DOCUMENTS: KEEP OR TOSS?

by Jim Slaughter, Attorney

“Order is most useful in the management of everything . . . Its maxim is, A place for everything and everything in its place.” These words, written by Scottish author Samuel Smiles in his 1875 essay *Thrift*, remain good advice to community associations today - especially when it comes to maintaining records.

Are your association’s important documents located where you can quickly get your hands on pertinent papers? Or is everything all lumped together in the bottom drawer of an overflowing file cabinet? Do you maintain your association’s important documents, and dispose of unimportant ones? Or are your association’s significant records, such as governing documents, likely to be found with correspondence from the first quarter of 2001, which you haven’t decided whether you’re supposed to keep?

What your association may need is a quality records-management system, which can make it easier to prepare taxes, prove losses to your insurance company, challenge bank or vendor records when necessary, and even establish what happened in the event of a lawsuit. To create such a system, you have to answer three questions:

- How should you maintain your association records?
- Which documents do you need to save, and for how long?
- And, how should you destroy unnecessary records?

HOW TO MAINTAIN

Technology has made it much easier to store large quantities of information in relatively little space. Thus, you can keep old-fashioned hard copies of your records, or you can put them on floppy disks or compact discs, optical scans, web-based systems, or DVDs. Different situations call for different techniques, based in part on your financial resources, the sheer volume of your records, and how often you’ll need to access them.

The important thing to remember is that bigger and brighter isn’t always better. Let’s say you’re a large association with voluminous correspondence that you’ve begun scanning to DVD. The advantage to this system is that it allows you to retrieve any record you’ve ever produced, perhaps indefinitely. The disadvantage is that, after several years, finding a single page among thousands after several years might prove difficult. Plus, do you really need to permanently archive that letter telling staff when to seed the grounds?

Realize also that technology changes. If your association saved documents to floppy disk just a few years ago, you may already find it difficult to retrieve that information—or even to buy a computer with a disk drive. Sometimes a simple paper copy is the best protection.

Once you understand the promise and the peril of advancing technology, consider how best to store everything you need to keep. To start, if you have a management contract or written policy stating that certain records are to be maintained for a certain time, do it! In the event you go to court, there is nothing worse than having to admit that records “were not kept in the course of a regularly conducted business activity.” While formal document-retention policies are more common in the for-profit world than the association world, many of the essentials are the same. According to Sharon Nelson and John Simek, of Sensei Enterprises Inc., a legal technology and computer forensics company in Fairfax, Virginia, a corporate document retention policy typically specifies:

1. How long, how, and where to store both paper and electronic records, including the manner in which they should be organized and cataloged so they can be recovered with relative ease.
2. How records should be destroyed when their retention period has expired.
3. The circumstances under which the policy should be suspended, such as when a lawsuit is anticipated or in progress, a subpoena has been served, or an investigation is underway.
4. The individuals responsible for enforcing, monitoring, and updating the policy.
5. Penalties for non-compliance.

No matter what storage method you choose, understand that the benefits of a good records-management system extend beyond questions of liability. I’ve seen managers save the day by quickly locating an important document in the middle of a heated board meeting.

WHAT TO KEEP

Because document-retention rules vary on a case-by-case basis, and because laws vary from state to state, there is no one-size-fits-all rule. Instead, you should make an informed decision about each specific type of document. On p. 40 [BELOW], you’ll find a sample records retention chart with a number of documents your association may need to maintain. The purpose of this schedule is twofold: to help you keep track of the types of documents your association produces, and to encourage you to discuss with your ’s attorney and accountant the minimum retention period, based on state laws and standard practice.

Sentry Group, a Fairport, New York–based manufacturer of safes, notes that when it comes to personal records, you should keep different documents for different lengths of time—sometimes indefinitely. Similarly, you can distinguish between those association records that should be kept forever and those that can be tossed after a minimum length of time.

Permanent. Documents that should be maintained permanently include current and past governing documents, including CC&Rs, articles of incorporation, and bylaws, plus any amendments to them. Minutes from membership and board meetings also fall into the permanent category, as do tax returns and government reports dealing with tax liability. Finally, never get rid of your accounting ledger, even after the books are closed.

Varying. Other important documents should be kept for various minimum lengths. Store your contracts—for management, landscaping, maintenance, and pest control, among other things—for at least seven years after they expire, and insurance policies for four years after they expire. Retain employment, personnel, bank, and credit-card records for at least six years, and mortgage and loan papers for three years after you make the final payment.

Taxes. While you should keep your tax returns permanently, the documents you use to prepare them are another matter. The IRS gives no specific guidance, but merely states that supporting records must be kept “for as long as they are important for any federal tax law.” In practical terms, the statute of limitations on many tax issues doesn’t run out for six years, so a safe course is to maintain any records that document income or deductions, including employment records, cancelled checks, bank statements, and invoices, for at least six years after you file. Recognize, however, that if you plan on using these documents to justify future tax returns, such as depreciation on property, you should keep them beyond future date.]

Legal. Evaluate records that reflect legal action (or possible legal action) on a case-by-case basis. For example, copies of judgments, liens, and foreclosures are not irreplaceable—after all, the actual legal documents are filed at the courthouse. Typically, causes of action to pursue delinquent homeowners expire three years from the failure to pay. However, statutes of limitations vary by state. For instance, lawsuits pertaining to documents that are signed “under seal,” such as filed real estate documents, may be allowed for up to 10 years.] As a result, you should keep legal documents for at least six to 10 years after the occurrence that led to any liability, subject to the advice of your attorney.

Also, as noted above, litigation changes everything. Unless you have received specific advice from your attorney, do not discard and do not apply your standard retention policy to any documents pertaining to a pending civil or criminal lawsuit. If your association is involved in a lawsuit, you’ll be punished—sometimes badly—for disposing of evidence related to the suit.

Electronic. The general rules described above are no different for electronic documents, such as text files (including word-processing documents), presentation files (such as PowerPoint), spreadsheets, e-mails, graphic files, databases, calendars, and backup files. What is different with electronic records is how you store them. Typically, the choices are to print out electronic documents and keep a hard copy or to download them and maintain a copy in a separate format, such as on a CD.

Who? A side issue to the question of how long you should maintain your documents is who should maintain them. One of the worst record-management systems I see—all too regularly—is a box of documents that gets transferred from board secretary to board secretary. This is unforgivable, a tactic better suited to a local garden club than a nonprofit business entrusted with its residents’ money.

I’ve also heard association officers say that their management companies maintain all their documents. While it’s nice to have that level of trust in your professionals, you have to realize that allowing a management company to hold onto your documents while they’re relevant to the company’s work is not the same thing as a long-term records-management system. Even if you

have a management contract that stipulates otherwise, the ultimate responsibility for association records retention belongs to the association. As a result, you should consider keeping your older hard-copy records on-site (assuming you have an office), in a safe deposit box, in a storage facility, or with a records management company.

HOW TO DISPOSE

Figuring out what you need to keep and for how long you means that, eventually, you'll have a stack of outdated records to throw out. At this point, you need to ask who has been entrusted with the documents—your association itself, or someone else, such as your management company.

If the documents are your responsibility, you can destroy them in one of several ways, including shredding, incinerating, and pulverizing. While no particular technique is mandatory, the method you choose should preserve the confidentiality of the documents, which may include sensitive legal advice or grievances against the association. So, whatever you do, don't just throw everything into a wastebasket.

If other parties are caring for your documents, they should understand their obligations, and destroy records only with your association's consent. Without such consent, a management company or other group should be wary of disposing of anything belonging to a client.

The best course of action is to specify how outdated association documents are to be handled in your records-management policy. For instance, the policy might provide that your management company will notify the association that certain documents will be destroyed unless the association retrieves the files within a certain amount of time. If the association indicates it wants the documents, a reasonable opportunity for retrieval should be given; upon receipt of the documents, the association should sign a form certifying the pickup. If your association doesn't want the files, they can be disposed of in a way that preserves confidentiality—usually shredding.

Destroying electronic documents is a bit more challenging. As is widely known these days, “deleting” a computer file does not actually remove the information. For that matter, deleting a file from Microsoft Windows' Recycle Bin doesn't eliminate the actual information either. As a result, if you're simply deleting electronic files and then throwing away your computer, you may be giving your most confidential information to anyone who has some technical know-how and owns a software utility program. If your computer files must be kept private, realize you may have to take additional steps to truly dispose of the information they contain. You might buy special software to erase electronic data, for example, or physically destroy the disc itself.

While no record storage and retrieval system is perfect, that's not really the point. Instead, your goal is to develop a system that allows you to keep those pieces of paper only as long as you need them, and to find important records when it counts. In this way, your association really will have a place for everything and everything in its place.

Retention Schedule

You should hold onto some records forever. But for others, the retention period will vary according to what state you live in and what information the documents contain. Review this list with your attorney or accountant to determine how long you should keep each record.

Record	Located (Y/N)?	Retention Period?
DOCUMENTS		
Ownership/Membership Records		PERMANENT
Deeds, Plats, Maps		PERMANENT
Governing Documents – Declaration, Covenants, Conditions & Restrictions (CCR’s or DCCR’s), Master Deed (current and past, amendments)		PERMANENT
Governing Documents – Corporate Charter/Articles of Incorporation (current and past, amendments)		PERMANENT
Governing Documents – Bylaws (current and past, amendments)		PERMANENT
Governing Documents – Board Policies/Resolutions		
Governing Documents – Restrictions and Rules		
Governing Documents – Architectural Approved and Disapproved		
Governing Documents – Architectural Guidelines (current and past)		
Minutes book – Annual Meetings		PERMANENT
Minutes book – Board of Directors		
Minutes – Committees		
GENERAL		
Contracts (current and expired)		
Correspondence (general)		
Correspondence (legal and important matters)		

Record	Located (Y/N)?	Retention Period?
LEGAL/INSURANCE/CLAIMS		
Court Filings and Pleadings (foreclosures, small claims actions, etc.)		
Accident Reports and Claims (current and settled)		
Insurance Policies (current)		
Insurance Policies (expired)		
FINANCIAL		
Accounts Payable and Receivable Ledgers		
Bank Statements, Cancelled Items and Reconciliation		
Certificates of Deposit		
Budgets		
Financial Statements (end of year, other months optional)		
General Ledgers (and end of year trial balances)		
Checks (canceled for important payments, i.e. taxes, purchases of property)		
Depreciation Schedules		
Inventories		
Invoices		
Billing (Owners) Records		
Notes Payable Documentation		
Purchase Orders		
Subsidiary Ledgers		
Audits and/or Year-End Financials		
Tax Returns		PERMANENT
Tax Documents Relating to Preparation of Tax Returns		

This article is intended to provide general information about the topic discussed and is not legal advice or a legal opinion. Specific questions should be directed to an attorney.