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RECORDS TO KEEP

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This article primarily provides “suggestions” on what records to keep. Unfortunately, few laws say exactly what to keep or when to discard it, and there is only minimal statutory guidance, so, much of this article is the author’s opinion that includes input from experts in other legal and financial disciplines. Also, there are undoubtedly some other categories of records not addressed in this article that may be as important as those addressed below.

A few publications from the IRS also provide guidance. Publication 552 “Recordkeeping for Individuals” and Publication 583, “Starting a Business and Keeping Records,” are both available on request or can be accessed and printed from the Internet at <http://www.IRS.gov>. Also, an article in the April 2000, SMART MONEY MAGAZINE (p. 88), citing an H&R Block tax specialist, gives suggestions for individuals. The specialist suggests keeping all tax-related items for seven years, citing IRS Publication 552. The suggestions for what not to keep seem more applicable to individuals than businesses.

If you have large quantities of documents that you think you should keep, but you don’t have the room, consider storing the information in computer form, either with software data files or scanned images. Keep the data on CD-ROMs. While this will take far less space than paper, you should think about how to access those documents in the future. Just try to find a floppy drive for a 5 1/4 inch floppy disk today. Suppose the data is stored in a format for a pre-PC, Lanier word processor (vintage 1980) or in IBM

Displaywrite software (vintage 1986). Now try to play that old 8-track tape from 1968. Will there be a Rosetta Stone in the future for today’s hieroglyphics? The data may be there, but who can read it? Unless you are using the most common software today, it probably won’t be readable in 10-20 years and, even then, it may be difficult. So, keeping paper may be inevitable.

As for specific documents, an association’s minutes constitute the official record of its acts. Both incorporated and unincorporated Associations must keep minutes and must allow members to inspect them (see Corp. Code §8320 & 8333 and Civil Code §1365.2). The original minutes should be kept forever, including minutes of membership meetings, regular board meetings and executive sessions (kept separately from regular board meeting minutes). The same applies to minutes of any committee that is empowered to exercise any board powers. If you don’t have originals, keep what you do have, signed or unsigned.

Some accountants have told me that the IRS has a 3-year rule and that the California Franchise Tax Board has a 4-year rule for conducting tax audits (absent fraud). However, there is no limit on the time these agencies can pursue a claim if a tax return wasn’t filed. One accountant told me that the IRS once claimed a client didn’t file a tax return 14 years earlier. If the IRS has no record of a tax return or the tax payments, it will be impossible to show that you filed or paid the taxes without the return and the canceled checks. Using this knowledge, it would be wise to keep all original financial documents for at least 4 years after filing

the tax return and to keep the tax returns and any tax payment checks forever.

California has a 4-year statute of limitations for lawsuits arising out of contracts or other written documents (Code of Civil Procedure §337). If you signed a management contract 6 years ago, but the document remains in effect today, keep it until at least 4 years after the contract has terminated. To keep track of contracts, you should have a file or notebook containing all active contracts and a separate file for those that have terminated.

The law provides some guidance about ballots, proxies, sign-in sheets, and other election records accumulated over the years. Even though an election is conclusively presumed valid 9 months after it occurs (see Corp. Code §7527), Civil Code Section 1363.03(i) requires ballots to be stored for one year after the date of the election. It would be good practice to store all election materials for this period. Of course, you should note the election results in the relevant meeting minutes (see Corp. Code §8325).

Newly revised Civil Code Section 1365.2, effective July 1, 2006, now specifically identifies a number of association records and specifies how long they must be made available to the owners (which is the same as saying "retained"). Excluding minutes, which are addressed separately, these records include: (1) financial documents required pursuant to Civil Code Sections 1365 and 1368; (2) interim unaudited financial statements which include a balance sheet, income and expense statements, budget comparison or a general ledger; (4) written Board approval of contracts or vendor bills; (5) state and federal tax returns; (6) reserve account records; (7) membership lists; (8) check registers; and, (9) so-called "enhanced" records including invoices, receipts, canceled checks, credit card statements, statements for services rendered and reimbursement requests. All of the foregoing must be available to the members (i.e., retained) for the current fiscal year, and for the previous two fiscal years. This is a minimum retention period, and they should be kept longer if another rule or category applies, and it requires a longer retention period.

The following comments address some other documents that you probably want to keep indefinitely or at least for longer periods of time.

Among financial records, certainly annual audits or reviews are among the most important of association financial records. Each is typically a small booklet, but each summarizes an entire fiscal year, so it seems reasonable to keep them indefinitely.

You should also have an inventory list, at least for items having any significant values, including a description of each item purchased, the purchase date, amount and check number. If you have a casualty loss, you will need the purchase invoice or canceled check and it seems reasonable to keep the proof of purchase as long as you own the property.

If you have an uncollected judgment, it is good for 10 years and can be renewed for 10 more. Judgments and recorded abstracts of judgment can pop up years later, usually when a former owner wants to pay off the judgment to obtain new credit. While a copy may be available in court files or attorney records, it may have been archived or even destroyed, or it may take some time to obtain an archived file from storage. Thus, it is probably wise to keep these records handy while the judgment is valid.

Liability claims can arise years after the occurrence and the Association will need to find the original insurance carrier to obtain a defense. Even some property casualty claims may arise years later. Several carriers may be involved over a period of years. So, you should keep a file for each insurance carrier and its policy, then add each year's declarations page plus any changes and endorsements that take effect during the life of the policy.

Most associations keep a file for each owner's property containing all correspondence and other records relating to that property or its owners. If an owner changes, routine correspondence can be archived and probably discarded following the general guidelines at the

end of this article. However, for the reasons described below, you should probably retain indefinitely documents relating to the property itself, like architectural applications and recorded maintenance and indemnity agreements.

We know of one association that was about 30 years old. A professional "efficiency expert" was hired to help them discard the accumulation of old papers. Unfortunately the professional knew nothing about Community Associations and discarded old architectural applications and approvals for the owners' lots. Then, at least for some improvements, it became impossible to tell what had been approved and what was constructed by the owner versus the developer.

Also, prior architectural decisions can provide guidance to architectural committees and boards by providing records of what did and didn't work and why. Now Civil Code §1368 requires architectural decisions to be in writing, and if a proposed change is disapproved, the written decision must explain why. Although you may keep the originals in separate files for each unit, you may find it more helpful to have at least a summary of each decision well-indexed in one or more files or notebooks that list the improvements added and the reasons why they were or were not approved or any regrets or complaints that followed an approval. Courts have allowed associations to change their minds based on the lessons of experience.

For associations with employees, retaining payroll and employment records is more difficult to address. There are different statutes of limitations for state and federal wage claims, age and sex discrimination claims, etc. Some run from the date of the first breach and others from the date of the last violation. Depending on the claim raised, you may need time cards, hourly rates and annual salary data paid to different employees, evaluations and other personnel file records, and employee manuals and amendments. For employees, you should probably retain the records until at least 5 years after the employment ends. Certainly, you should retain all records at least 5 years for current employees and you should retain

all personnel file information indefinitely as long as employment continues. Unfortunately, it is far more difficult to say how long to keep the records to defend against other claims that current employees might raise in the future. If you get rid of employee records, be sure to shred them to prevent both identity theft and access by unauthorized people to personal and confidential information about the former employees.

With any documents that you plan to keep forever, you should probably keep like documents together as a set, e.g. insurance policies and tax returns, so that any new document can be added to the file with those of prior years. It also seems reasonable to keep all the "sets" together in the association's active files and marked "KEEP FOREVER" to reduce the risk of being inadvertently discarded. If you do not pull these documents out and file them in the right set immediately, they will undoubtedly become commingled with other documents that you may discard later and the task of sorting through them when you are ready to discard the rest will become significantly more difficult.

Records seem to disappear over the years. Thus, it is a good idea to consider using either a professional document storage company or obtain a commercial self-storage unit just for your association's records. Develop a numbering system for the boxes and keep an index of what is in each box so that you can find things many years later.

A general rule would be to say that, apart from the discussion above, most records can be discarded after 5 years. However, even a 5-year guideline cannot be applied categorically, and once a unique document is discarded, it is gone forever. If you are in doubt, you probably should err on the side of keeping the documents, or at least get specific advice from someone with special expertise in the area that may be affected by the disposal.