

Records to Keep

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Unfortunately, there are few laws that say exactly what records a community association should keep or for how long. For this reason, much of this article is based on the author's experience and opinions, with input from experts in other legal and financial disciplines. Please note, there are undoubtedly some categories of records not addressed in this article that may be as important as those addressed below.

If you have large quantities of documents that you think you should keep, but you don't have the room, consider storing the records in computer form, either with software data files or scanned images. While this will take far less physical space than paper, you should think about how to access the documents in the future. Just as floppy disk drives have disappeared, making it difficult to pull data stored on such disks, it is important to realize that technology commonly used today may soon become obsolete. Therefore, unless you are using the most common software and hardware available now to store your records, know that it probably will not be readable in 10 to 15 years. In fact, even using the most common software and hardware available now will not ensure that you will be able to access your electronically stored records a decade or so from now. For this reason, keeping paper records may be prudent.

Member Meeting, Board Meeting and Committee Meeting Minutes

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 and §8333; Civil Code §4950 (board meetings), §5200 and §5210). 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.

Ballots, Outer Balloting Envelopes and Proxies

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 sections 5125 and 5145 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).

Contracts

Civil Code sections 5200 and 5210, which became effective January 1, 2014, require associations to make executed contracts that are not privileged under law available to the owners (which is the same as saying they must "retain" these records) for the current and prior two fiscal years.¹ Having said this, an association should not destroy these documents at the end of this period.

California has a 4-year statute of limitations for lawsuits arising out of contracts or other written documents (Code of Civil Procedure §337). Therefore, even if you signed a contract more than four years ago, you should keep the document for at least 4 years after the contractual relationship ended. For example, if you have an automatically renewing management or landscape maintenance contract, you should keep that contract for at least 4 years from the date the contract was terminated.

To keep track of contracts, you should keep a file or notebook containing all active contracts and a separate file for contracts that have expired or have otherwise been terminated.

Records Related to Taxes

Civil Code sections 5200 and 5210 also require associations to make many tax related records available to the owners for the current and prior two fiscal years. (The tax related records subject to section 5200 include, without limitation, state and federal tax returns, invoices, statements, receipts, canceled checks, approved purchase orders, reimbursement requests and credit card statements.) However, an association should not destroy these records at the end of this period.

We are informed that the IRS generally has a 3-year rule and that the California Franchise Tax Board has a 4-year rule for conducting tax audits (absent fraud). However, if a claim of loss from worthless securities is made or a deduction is taken for a bad debt, the statute of limitations (*i.e.*, the timeframe within which the IRS can challenge the claim or deduction) is 7 years. Furthermore, there is no limit on when these agencies can pursue a claim if a tax return wasn't filed. We have had clients whose corporate status was suspended for allegedly not filing a tax return more than fifteen years before. 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 (7 years if the return included a bad debt deduction or claim of loss) and to keep the tax returns and any tax payment checks forever.

¹ Civil Code Section 1661 defines an "executed" contract as a contract that has been fully performed – not just signed by the contracting parties.

If the Franchise Tax Board has no record that you filed or paid taxes and you do not have the records to prove otherwise, your corporation can be suspended. The state will not revive the corporation or allow you to terminate the existing corporation unless and until the Franchise Tax Board acknowledges that all returns have been filed and taxes paid.

A few publications from the IRS provide additional guidance on the retention of tax related records. Publication 17 (2014) "Your Federal Income Tax" 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 SMART MONEY MAGAZINE², citing an H&R Block tax specialist, gives suggestions for individuals. The specialist suggests keeping all tax-related items for seven years. It should be noted that the suggestions for what not to keep seem more applicable to individuals than businesses.

Employee Related Records

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. You should probably retain the records on an employee for at least 5 years after the employee's employment with the association ends. Certainly, you should retain all records for current employees for at least 5 years and you should retain all personnel file information for at least 5 years after the employer/employee relationship is terminated.

Unfortunately, it is far more difficult to say how long you should keep these records to defend against claims that current employees might raise in the future.

When you discard employee records, be sure to shred them to prevent both identity theft and the access of personal and confidential information by unauthorized persons.

Association Records Subject to Owner Inspection Pursuant to California Law

Civil Code section 5200 specifically identifies a number of other association records that must be made available to owners for inspection (and therefore, must be retained) for the current and prior 2 fiscal years. Excluding minutes, contracts and tax related documents, which we addressed separately, these records include: (1) all governing documents; (2) documents required pursuant to Civil Code sections 4525, 5300, 5305, 5310 and 5565; (3) interim financial statements which include a balance sheet, income and expense statement, budget comparison or a general ledger; (4) written board approval of contracts or vendor bills; (5) reserve account records and records of payments made from reserve accounts; (6) the agendas for membership meetings, board meetings and meetings of committees established

² April 2000 edition, page 88.

by the board pursuant to Corp. Code section 7212; (7) membership lists; and, (8) check registers.

The retention period required by Civil Code section 5200 is the minimum retention period. These records should be kept longer if another rule or category applies that mandates a longer retention period.

Other Association Records

There are records not addressed above that you probably want to keep indefinitely or at least for a substantial period of time.

Annual audits or reviews are among the most important association financial records. These documents, which typically come in a small booklet, summarize an entire fiscal year. It seems reasonable to keep them indefinitely.

You should maintain an inventory list, at least for items having a significant value. This list should include a description of each item purchased, the purchase date, the amount paid and the check number. If you have a casualty loss, you will need to provide the association's insurance carrier with a copy of the applicable purchase invoice(s) or canceled check(s). Accordingly, you should keep these documents for as long as you own the property.

If you have an uncollected judgment, it is good for an initial 10 year period and can be renewed for an additional 10 year period. 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 of these documents may be available in court files or attorney records, they may have been archived or even destroyed. Even if they can be obtained, it may take some time to obtain them from storage. Therefore, it is wise to keep these records while the judgment is valid.

Liability claims and certain property casualty claims can arise years after the incident(s) leading to such claims occurred and the association may have changed carriers one or more time in in the interim. The association will need to find the applicable insurance carrier to obtain insurance defense. A file should be kept for each insurance carrier and its policy(ies). Each year's declarations page, as well as any changes and endorsements that take effect during the life of the policy, should be added to the file.

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 those documents relating to the property itself, such as architectural applications and recorded maintenance and indemnity agreements.

We know of one older association that hired a professional “efficiency expert” to cull its records. Unfortunately the professional knew nothing about community associations and discarded old owner architectural applications and approvals. As a result, it became impossible for the association to confirm which lot alterations had been approved. It also became impossible to confirm which improvements had been owner rather than developer constructed.

There is another benefit to retaining architectural decisions. Prior architectural decisions can provide guidance to architectural committees and boards by providing a record of what alterations did and did not work in the past and why. These records can also assist an association in the event an owner challenges its approval for denial of a proposed alteration. (Courts have allowed associations to change their minds based on the lessons of experience.)

Civil Code section 4765 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 separate interest, you may find it more helpful to have at least a summary of each decision well-indexed in one or more files or notebooks. The summary should identify the improvements proposed and the reasons why they were or were not approved. This summary should also identify any regrets or complaints that followed an approval.

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

Records that you plan to keep forever should probably be kept with like documents in date order to make locating them easier (*e.g.*, tax returns). It also makes sense to keep all records in the association’s active files that are to be kept forever in a separate drawer or banker’s box marked “KEEP FOREVER” to reduce the risk of them being inadvertently discarded. If you do not separate out these records at the time of their creation or receipt, they will become commingled with other records that may later be discarded. Waiting until you are ready to discard records to separate out those that should be kept will likely be significantly more difficult and time consuming than filing them separately in the first place.

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 document, or at least get specific advice from someone with special expertise in the area that may be affected by the disposal.