



Document Retention and Destruction Policies: What Every Nonprofit Should Know

Introduction

For federal tax-exempt organizations, adopting a document retention and destruction policy can be an important step towards demonstrating the organization's commitment to accountability and transparency. Although adopting such a policy is not required in order to qualify for tax-exempt status, the IRS increasingly views such a policy as a good-governance practice that helps ensure compliance with IRS requirements.

What is a Document Retention and Destruction Policy?

A document retention and destruction policy sets guidelines for the length of time that various documents – ranging from contracts to employment agreements to vendor receipts – will be held in the files of the organization. It also provides that once the period for keeping the document has expired, the document should be destroyed. The adoption of a document retention and destruction policy serves to notify employees, officers, and directors of the time periods for which documents should be maintained, and helps to guard against improper disposal or destruction of documents with the intent of obstructing an investigation.

What Should a Document Retention and Destruction Policy Include?

Generally, when drafting a document retention and destruction policy, you should include:

- A list of document categories, along with the length of time (permanently, or a period of years) that the organization should retain such documents;
- A provision that restricts employees, officers, and directors of the organization from destroying documents in anticipation of litigation; and
- A provision that ensures that once the period for retaining the document expires, the documents and all copies of the document are destroyed.

The policy should provide that records be kept in a manner that makes them reasonably accessible to the appropriate people, such as in an online storage site to which more than one person has access. For example, important documents should not be stored only in a volunteer's basement or computer. To do so runs the risk that the documents will be lost when the individual is no longer affiliated with the organization.

It is also important that the documents be properly secured against their inadvertent destruction. For example, the organization should keep digital copies of documents on a server, with a proper method for backing up the files. In addition, when appropriate, physical copies of the records should be kept in a fire-proof filing cabinet in the organization's offices.

Prior to establishing document retention time periods, an organization should consult with its legal counsel regarding local laws, as they vary by jurisdiction, paying particular attention to both statutes of limitations and statutory and regulatory requirements for maintaining originals or copies.

Under the D.C. Code, D.C. exempt organizations must retain certain records permanently, including minutes of all meetings and records of all actions taken by the board, by its members, and any designated body. Current membership lists must also be maintained. The organization must also retain certain of these records at its principal office, in written or digital form, including:

- The articles of incorporation;
- Bylaws;
- Minute books for the most recent three years;
- All formal notices or other communications to members for the most recent three years;
- A current list of the names and business addresses of the exempt organization's directors and officers; and
- A copy of the nonprofit's most recent biennial report delivered to the D.C. Mayor.

Exempt organizations also should be aware of certain requirements of the Sarbanes-

Oxley Act of 2002 that apply to nonprofits: specifically, the imposition of criminal liability on exempt organizations that destroy records with the intent to obstruct a federal investigation. While the Act does not explicitly require the adoption of a document retention and destruction policy, it is recommended that exempt organizations adopt and abide by such a policy as a "best practice."

Document Destruction

While it is important for an organization to maintain records, it is equally important that an organization destroy documents once their maintenance is no longer required.

Destroying documents that are no longer needed helps the organization maintain more easily accessible files. With an effective document destruction policy, the organization is no longer "drowning in paper." In addition, if the organization is sued, it will not have to spend hundreds of hours looking through old, outdated documents to find the documents needed to respond to the lawsuit.

Keeping documents past their required retention date can also harm an organization. For example, suppose that ten years ago, a former employee made a valid claim of sexual harassment against another former employee. Suppose also that under your organization's document retention and destruction policy, the employment records for former employees should have been destroyed after seven years. However, if the records were not destroyed and your organization is again sued for sexual harassment, the organization will have to turn over the old records to the individual filing suit. If they had been destroyed as scheduled, the organization would not have to do so.

Public Inspection Requirements

In addition to providing guidelines on document retention, an organization's policy should also reflect public inspection requirements. A tax-exempt organization must retain and make available for public inspection:

- The organization's original IRS Form 1023 – application for exempt status (this must be retained permanently);
- The organization's IRS exemption determination letter (this must be retained permanently);
- The organization's Form 990 or 990 EZ – annual information return (this should be kept for a minimum of seven years); and
- Organizational records required by the D.C. Code.

In Section VI, Part C of Internal Revenue Service Form 990, organizations are asked whether they make these and other documents available to the public through:

- Their websites,
- A third-party website,
- Upon request; or
- Via another method.

An exempt organization is required to make Forms 1023 and 990 available for public inspection at its offices and must provide copies to the public upon request unless the forms are widely available on the Internet.

Many nonprofits choose to post their Form 990s on their websites. In addition, websites such as www.guidestar.org make most nonprofits' Form 990s available to the public.

Additional Resources

At this time, the IRS has not stated that forms made available on a third-party website will meet its requirements.

Pursuant to the D.C. Code, members of an exempt member organization are permitted to inspect and copy any of the records that are required to be maintained by the Code upon written demand and, in certain circumstances, upon a showing of proper and relevant purpose. Members may not use the member list for any commercial purpose or to solicit money or property (unless the money or property will be used to solicit votes of the members in connection with an election to be held by the exempt organization).

Record Audit

Once an organization has established a record retention and destruction policy, it is essential that the organization ensure that the policy is followed. From time to time, the organization should conduct an audit to ensure that it has copies of the records it is supposed to be maintaining.

For example, if the organization no longer has a copy of its IRS Form 1023, it can contact the IRS and obtain a copy. It can also contact former board members if it cannot locate minutes from prior years' meetings. If it cannot locate copies of its older insurance policies, it can ask the insurance carrier for copies of the policies. It is better to reconstruct records proactively. For example, your organization should not wait until it has a dispute with an insurance carrier about a claim to get a copy of the policy from the insurer.

You may find the following information helpful in reviewing your organization's good governance practices:

- Form 990, Schedules and Instructions, *available at* <http://www.irs.gov/Charities-&-Non-Profits>
- Document Retention Policies, National Council of Nonprofits, *available at* <http://www.councilofnonprofits.org/document-retention-policies>
- The Sarbanes-Oxley Act and Implications for Nonprofit Organizations, BoardSource and Independent Sector, *available at* http://www.independentsector.org/uploads/Accountability_Documents/sarbanes_oxley_implications.pdf

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The following is a sample document for nonprofit organizations incorporated in the District of Columbia. It is intended only for corporations that seek to qualify as tax-exempt organizations or to maintain their tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. This sample is provided only for informational purposes and does not provide specific legal advice for any individual situation. Some or all of this document may not be appropriate for your organization. The sample also reflects the provisions of the Internal Revenue Code and the laws of the District of Columbia as of the date it is written. However, laws change. Only an attorney with knowledge of your particular situation can provide the legal assistance you need.

DOCUMENT RETENTION POLICY

[NAME OF ORGANIZATION]

ARTICLE I

PURPOSE

The purposes of this document retention policy are for [Name of Organization] (the “Organization”) to enhance compliance with the applicable legal requirements, including the D.C. Code (the “Code”) and the Sarbanes-Oxley Act, and to promote the proper treatment of corporate records of the Organization.

ARTICLE II

POLICY

Section 1. General Guidelines. Records should not be kept if they are no longer needed for the operation of the business or required by law. Unnecessary records should be eliminated from the files. The cost of maintaining records is an expense which can grow unreasonably if good housekeeping is not performed. A mass of records also makes it more difficult to find pertinent records.

From time to time, the Organization may establish retention or destruction policies or schedules for specific categories of records in order to ensure legal compliance, and also to accomplish other objectives, such as preserving intellectual property and cost management. Several categories of documents that warrant special consideration are identified below. While minimum retention periods are established, the retention of the documents identified below and of documents not included in the identified categories should be determined primarily by the application of the general guidelines affecting document retention, as well as the exception for litigation relevant documents and any other pertinent factors.

Records required to be maintained by the Organization at its principal office pursuant to the Code may be retained in written form or in digital form.

Section 2. Exception for Litigation or Investigation Relevant Documents. The Organization expects all officers, directors, and employees to comply fully with any published records retention or destruction policies and schedules, provided that all officers, directors, and employees should note the following general exception to any stated destruction schedule. If you believe, or the Organization informs you, that Organization records are relevant to any ongoing or anticipated (*e.g.*, a dispute that could result in litigation) litigation, proceeding or government investigation, then you must preserve those records until it is determined that the records are no longer needed. That exception supersedes any previously or subsequently established destruction schedule for those records.

Section 3. Minimum Retention Periods for Specific Categories.

- (a) Organizational Documents. Organizational records include the Organization's articles of incorporation, by-laws, Internal Revenue Service (the "IRS") Form 1023 (application for recognition of exemption under Section 501(c)(3) of the Internal Revenue Code) and IRS exemption determination letter. Organizational records should be retained permanently. IRS regulations require that the Form 1023 and the IRS determination letter be available for public inspection upon request. The Code requires that the Organization's articles of incorporation, by-laws and all amendments thereto currently in effect be maintained at its principal office.
- (b) Tax Records. Tax records include, but may not be limited to, documents concerning payroll, expenses, proof of contributions made by donors, accounting procedures, and other documents concerning the Organization's revenues. Tax records should be retained for at least seven years from the date of filing the applicable return. The IRS requires that the Organization's last three filed Form 990s be maintained at its principal office.
- (c) Employment Records/Personnel Records. State and federal statutes require the Organization to keep certain recruitment, employment and personnel information. The Organization should also keep personnel files that reflect performance reviews and any complaints brought against the Organization or individual employees under applicable state and federal statutes. The Organization should also keep in the employee's personnel file all final memoranda and correspondence reflecting performance reviews and actions taken by or against personnel.

Employment applications should be retained for three years. Retirement and pension records should be kept permanently. Other employment and personnel records should be retained for seven years.
- (d) Board and Board Committee Materials. Meeting minutes should be permanently retained in the Organization's minute book. A record of all actions taken by the Organization's directors or members, or any designated body thereof, with or without a meeting, should be permanently retained. The Code requires that the Organization's meeting minutes and record of all actions for the past three years be

maintained at its principal office. A clean copy of all other Board and Board Committee materials should be kept for no less than three years by the Organization.

- (e) Press Releases/Public Filings. The Organization should retain permanent copies of all press releases and publicly filed documents under the theory that the Organization should have its own copy to test the accuracy of any document a member of the public can theoretically produce against the Organization.
- (f) Legal Files. Legal counsel should be consulted to determine the retention period of particular documents, but legal documents should generally be maintained for a period of ten years.
- (g) Marketing and Sales Documents. The Organization should keep final copies of marketing and sales documents for the same period of time it keeps other corporate files, generally three years.

An exception to the three-year policy may be sales invoices, contracts, leases, licenses, and other legal documentation. These documents should be kept for at least three years beyond the life of the agreement.

- (h) Development/Intellectual Property and Trade Secrets. Development documents are often subject to intellectual property protection in their final form (*e.g.*, patents and copyrights). Records related to intellectual property (*e.g.*, patent applications and trademark and copyright registrations) should be retained permanently. The documents detailing the development process are often also of value to the Organization and are protected as a trade secret where the Organization:
 - (i) Derives independent economic value from the secrecy of the information; and
 - (ii) Has taken affirmative steps to keep the information confidential.

The Organization should keep all documents designated as containing trade secret information for at least the life of the trade secret.

- (i) Contracts. Final, execution copies of all contracts, (*e.g.*, mortgages or leases) entered into by the Organization should be retained. The Organization should retain copies of the final contracts for at least three years beyond the life of the agreement, and longer in the case of publicly filed contracts.
- (j) Correspondence. The Code requires that the Organization maintain at its principal office all formal notices or other communications to members for the last three years. Unless correspondence falls under another category listed elsewhere in this policy, correspondence should generally be saved for two years.
- (k) Banking and Accounting. Annual financial statements should be retained permanently. The Code requires that the Organization maintain at its principal office its financial statements for the last three years. Checks for important

payments and purchases and depreciation schedules should be retained permanently.

Any inventories of products, materials, and supplies and any invoices should be kept for seven years. Accounts payable ledgers and schedules should be kept for seven years. Bank reconciliations, bank statements, deposit slips and checks (unless for important payments and purchases) should be kept for three years.

- (l) Insurance. Expired insurance policies, insurance records, accident reports, claims, *etc.* should be kept permanently.
- (m) Audit Records. External audit reports should be kept permanently. Internal audit reports should be kept for three years.
- (n) Contributions/Grants. Contribution records and documents evidencing terms of gifts should be retained permanently. Records related to grants should be retained for seven years following the end of the grant period.
- (o) Membership. The Code requires that the Organization, if it is a membership organization, maintain at its principal office a record of its members, in a form that permits preparation of a list of names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.
- (p) Directors and Officers. The Code requires that the Organization maintain at its principal office a list of the names and business addresses of its current directors and officers.
- (q) Biennial Report. The Code requires that the Organization maintain at its principal office a copy of its most recent biennial report delivered to the D.C. Mayor.

Section 4. Electronic Mail. E-mail that needs to be saved should be either:

- (i) Printed in hard copy and kept in the appropriate file; or
- (ii) Downloaded to a computer file and kept electronically or on disk as a separate file.

The retention period depends upon the subject matter of the e-mail, as covered elsewhere in this policy.

Section 5. Inspection. The Code requires that the Organization, if it is a membership organization, grant members of the Organization the right to inspect and copy any of the records that are required to be maintained by the Code upon written demand and, in certain circumstances, upon a showing of proper and relevant purpose. Members may not use the member list for any commercial purpose or to solicit money or property (unless the money or property will be used to solicit votes of the members in connection with an election to be held by the Organization).

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