

DOCUMENT RETENTION POLICIES

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Since the enactment of Sarbanes-Oxley, it is a criminal offense to destroy documents that hinder a federal investigation, including an IRS examination. One defense to this crime is that the documents were destroyed under a reasonable document retention policy. Since church administrators do not want to go to jail, they frequently keep everything forever. Others adopt a clean at all cost mentality and destroy all documents as soon as they deem them no longer useful. Both approaches can be counterproductive. The church needs a consistent standard to govern when documents can be destroyed.

This subject is further complicated by new federal rules of civil procedure that became effective December 1, 2006. These rules require that electronic forms of documents be retained in the case of federal litigation. It also requires the parties to federal litigation to have a reasonable document retention policy to prevent sanctions from inadvertently destroying electronic documents.

As a result of these two measures, I am recommending that every church adopt a written document retention policy. This article describes what a reasonable document retention policy should contain.

TYPES OF DOCUMENTS

A good document retention policy begins by identifying the types of documents that are maintained by the church in determining how long those records are essential to the church. A document may be as obvious as a memorandum, an e-mail, a contract, or something not as obvious, such as a computerized desk calendar, appointment book, phone messages or an expense record.

The law requires the church to maintain certain types of records for a specified period of time. Failure to maintain those records for the minimum time could subject the individual custodian of those records in the church to penalties, fines, loss of rights, obstructing justice charges, place the church in contempt of court or seriously disadvantage the church in litigation.

Once the church knows of a threat of litigation, it should notify all custodians of records to stop destruction of documents and to retain all documents relative to the litigation. This usually means creating an exact copy of all hard drives on all church computers that may have relevant information. It will also involve retaining all phone messages that exist at the time of the notice. Since it is critical to know when documents can be safely destroyed, I have created a summary of the time frames I generally recommend. Please note that your state law may vary the time frame, so check with a local lawyer before adopting these suggestions.

SUGGESTED TIME RETENTIONS

1. Corporate Articles of Incorporation, Bylaws, Notices of Meetings, minutes of board meetings, and minutes of committee meetings should be retained permanently. The church should maintain duplicate copies of all these records in different locations and in different forms. For example, the church could maintain an electronic version of these records on its fileserver and another electronic version on a CD placed in a safety deposit box. The church could also retain hard copies of these records in the church offices and in the safe deposit box.
2. All original real estate records should be retained permanently. This would include deeds, deeds of trust, liens, easements, leases and mineral records. They should be scanned and the images placed on a CD that is placed in the church safety deposit box. The CD should be checked once per year.
3. All tax records, including payroll, expenses, proof of deductions, the accounting procedure manual, and other documents related to the church's income and expenses, should be retained for six years following the close of the year. The electronic versions of these documents should be placed on a CD and placed in the church's safety deposit box. There is no law that requires a church to keep contribution envelopes. I suggest retaining contribution envelopes until three months after the annual contribution statement has been delivered to members.
4. All employment/personnel records, including recruitment, employee applications, job descriptions, performance reviews, compensation information, complaints against employees, letters to and from employees and resumes, should be retained for six years. The electronic versions of these documents should be placed on a CD and placed in the church's safety deposit box. Background check information should only be retained in accordance with the federal Fair Credit Reporting Act which requires a special security measures all such documents and specifies the destruction methods that must be used on these reports.
5. Legal documents should be retained for a period of 10 years, unless the church's lawyer advises is a different retention period.
6. All policies related to donations should be retained for three years after they are no longer in effect.
7. All intellectual property documents should be retained for the life of the copyright, trademark or service mark. If the church has any trade secrets, those should be retained as long as necessary to protect the secret. Corporate authors are granted a copyright for 95 years.
8. Electronic information, including e-mails, letters, databases and accounting data, should be governed by the underlying type of document. For example, you could adopt a policy that states that e-mails are retained for three months unless the recipient saves the

e-mail to a specified folder on the server. Most policies prohibit employees from retaining e-mails on their local computers. All electronic information must be retained in its native format. The church should also maintain copies of all software necessary to access the electronic documents. All electronic data and the software should be placed in the church's safety deposit box for safe keeping.

For a sample document retention policy, please email me at fsommerville@nonprofitattorney.com.