

Record-Keeping Requirements

Acknowledgements

- This is one in a series of webinars dealing with the operation of small nonprofit organizations.
- It is being conducted in partnership with Weil Gotshal and Manges and the following organizations



Board Should Adopt a Record Retention Policy

☐ IRS provisions

- Records must clearly show income and expenses.
- Form 990, Part VI requires nonprofit to disclose if it:
 - Contemporaneously documents Board and committee meetings.
 - Maintains written document retention and destruction policy.

Maintain Records for Public Inspection

- Nonprofit must make certain forms available for inspection by public upon request. Forms that must be available for public inspection:
 - Form 1023 – Applications filed after July 14, 1987 must be made permanently available for public inspection.
 - Penalty of \$20 per day if fail to comply.
 - Forms 990/990-EZ/990-N (except donor names and addresses from Schedule B) and, if applicable, 990-T.
 - Must be made available for 3 year period from the due date of the return or liquidation, dissolution, or termination.
 - 990-N available through IRS website.

Maintaining Records for Public Inspection

- ❑ Individual requests for copies of public documents:
 - *In-person at principal office*: must provide same day.
 - *In-person if nonprofit has no principal office*: provide at reasonable time and place within 2 weeks.
 - *By mail*: fulfill requests within 30 days.
 - *Charge to requester*: Nonprofit may charge reasonable copying costs and actual postage.
- ❑ Posting forms on nonprofit's website or Guidestar
 - Satisfies requirement to provide copies on request but still must comply with in-person inspection requests.
 - Must inform requesters of where documents are online.
 - Guidestar does not post documents in time to meet all IRS requirements, so must add to Guidestar disclosure.

General Requirements for Retaining Common Records

□ Legal Requirements

- Records in connection with litigation or potential legal action must be kept until settlement or the time to file/appeal expires.
- Federal tax requirement
 - Keep books and records on tax year basis.
 - Keep financial records supporting information on tax return until statute of limitations ends.
 - Usually the later of the date the return is due or filed plus six years.
 - Keep Form 990s for at least seven years – IRS may audit returns for three years, or if a material understatement of revenue, for six years. Best practice to keep permanently.

Common Record Retention Requirements

□ State and local requirements

- May need to keep records longer—check your state law.
- In states with a long statute of limitations for breach of charitable trust actions, such as California (10 years), some records may need to be kept longer than the recommended best practices.
- If a membership organization, may have to maintain records and make them available to members for inspection. Board members have a right to inspect records
- Charitable solicitation laws in some states require nonprofit to make financial information available upon request.

□ Federal employment laws

- Should be kept at least until statute of limitations expires.

Common Record Retention Requirements

☐ Best Practices

■ General rules

- Records should be kept permanently if have enduring value:
 - Application for tax-exempt status.
 - IRS determination letter.
 - Organizational documents (articles, bylaws) with amendments.
 - Board and committee minutes, policies, resolutions.
 - Copyright, trademark, patent registrations.
 - Form 990 tax returns.
 - Financial statements.
 - Certain state and local filings.
 - Insurance policies (auto, general liability & umbrella policies usually cover any claim incurred as a result of action that took place during policy period, even if claim filed years later.)

Common Record Retention Requirements

- ❑ Records with limited value should be kept for 3 years unless required to be kept longer by law.
- ❑ Records with little or no long-term value should be kept until no longer than needed for reference.
- ❑ Records for donor's tax reporting
 - Keep copy of acknowledgment of donation and IRS Forms 5253 or 5252 for six years.
- ❑ Minute books:
 - Prepare contemporaneously with meeting. Keep permanently.
 - “Contemporaneous” for IRS purposes:
 - ❑ Prepare before next meeting or within 60 days, whichever is later.

Common Record Retention Requirements

- ❑ Minutes should include:
 - Name of organization, date, time and place of meeting, who called meeting, who prepared minutes and members present/absent.
 - All motions made and results of voting. Directors may request that minutes state specifically that they voted no on a motion. It will help shield director from liability if appropriateness of action questioned.
 - Specific discussion and actions relating to the following:
 - ❑ Conflict of interest policy, whistleblower and record retention policy/Related party transactions.
 - ❑ Executive compensation.
 - ❑ Financial audits.
 - ❑ Disposition of a large portion of the organization's assets.
 - ❑ Changes to governing documents.
 - ❑ Participation in joint venture arrangements.

Common Record Retention Requirements

□ State or local filings

- State tax exemption filings: permanent.
- Annual or biennial reports (to secretary of state and/or attorney general): permanent.
- Basic business license: if license required, keep permanently.
- Charitable solicitation registrations: if registration required, keep initial registration permanently; annual renewals for 10 years.

Common Record Retention Requirements

- ❑ Contracts: contract term plus seven years.
- ❑ Financial audits: permanent.
- ❑ Bank records: 7 years
- ❑ Employment records
 - Employment applications: 3 years
 - Personnel or employee files: 7 years following termination
 - Payroll records: 7 years

Common Record Retention Policy

- ❑ Employee insurance records – HIPAA compliance
 - Maintain separate from personnel files and kept secure.
 - Employee health information only disclosed on a need-to-know basis.
- ❑ Correspondence
 - Hard-copies and internal memorandums
 - ❑ Routine matters: 2 years.
 - ❑ Important/legal matters: permanent, subject to review.
 - Emails
 - ❑ Important/legal matters: permanent, subject to review.
 - Print and keep with hard-copies and internal memoranda
 - ❑ Other emails – keep as long as necessary based on content of email. (I.e., employment matter would be kept as long as other employment records.)