

Condo Insights – Important documents and records retention guidelines for condominium and homeowner associations

In the course of doing business, condominium and homeowner associations generate a lot of paperwork and records. It's important to know what to keep, how long to keep it; what can be tossed, and how to manage the process. It's also important to know what documents should be protected as permanent records of the Association and what should be readily accessible. At the very least, condo board members should be familiar with best practices, the New Jersey Condominium Act and New Jersey Department of Community Affairs guidelines regarding retention of specific documents.

Many residential condominiums at the shore have been in existence for more than 30 years, and over time records for them could have gaps. A few gaps in the recordkeeping here and there generally are not cause for great alarm, but associations that fail to keep proper records could find themselves facing serious ramifications. Good recordkeeping leads to efficient and timely access to important building records and warranties, makes audits smoother and may reduce the risk of errors-and-omissions lawsuits and other legal challenges.

Managing documents and records is simplified if they are organized in part based upon how long they will be retained. Permanent files, records retention periods mandated by law, retention if the record or document could affect litigation, statutory requirements and annual files are all part of the record management process.

Certain records must be retained permanently. Corporate records such as; incorporation documents; the public offering statement; recorded Master Deed, By-Laws and any amendments to the governing documents; meeting minutes and resolutions; legal documents related to litigation; deeds, mortgages, trademarks and copyrights. In addition, archival and historical documents, trademarks, permits, land leases, transition settlements and anything relevant to the history or structure of the association. Reserve studies and engineering reports, as well as individual unit files for each unit in the association. Accounting records such as audit reports and annual financial statements; tax returns and supporting schedules; general ledgers, charts of accounts and cancelled checks for major purchases. Permanent records also include: insurance policies and records; elevation certificates; property appraisals and insurance valuation reports. To the extent possible, maintain permanent digital and/or online backups of all Association business records.

Additional permanent records and documents include: blueprints, utility shut-off maps, maintenance schematics and other equipment or operations and maintenance (O&M) manuals, floor plans. Some building records that should also be kept include elevator manuals and inspection reports, emergency evacuation plans and a schematic of the building's fire suppression system; environmental plans including water testing reports, and asbestos reports.

Some records must be retained for statutorily required lengths of time; typically seven to ten years: General accounting information including condo fee payment records; paid invoices for expenses; bank statements, cancelled checks; loan records (from last payment). Also: payroll and employee records (from date of separation); and association correspondence including newsletters and homeowner correspondence; accident reports and claims (settled cases)

Records management also is affected by the approach. Most accounting and bookkeeping records are organized by fiscal year which ties the annual operating budget, the condo fee schedule and the invoices for all operating expenses during the fiscal year are retained in one place, making it easy for the accountants to audit the records and easier for future or subsequent research. However, files for reserve replacement expenses and deferred maintenance ("DM") expenses should be retained permanently. Reserve and DM expenses are typically incurred on a less frequent basis but represent purchases or contracts for repair or replacement of association assets or building components

Documents and records that should be readily available and accessible include: Master Deed and By-laws; most recent meeting minutes; current year budget; current insurance policies and the current capital reserve study. Consider rules & regulations, policies and procedures, contractor guidelines and emergency response manuals as essential for quick access. Permanent files should be established for governmental permits and registration certificates, annual pool inspection reports, service contracts, elevator inspection reports and fire system inspections and reports, but these files should also be readily accessible.

For records that may not be mandated by law, one rule of thumb for retention pertains to the record's ability to affect litigation. Consider the statute of limitations (6 years on contract actions) that could pertain to the document can influence length of retention. Recent changes to the NJ Condo Act also require board and trustee election ballots and materials to be retained for a two-years.

Given such required record-keeping, where should important records and documents be physically stored and where should they not be kept? For several reasons, records should not be kept on site but off-site or as cloud-based storage. Obvious advantages to cloud-based (digital) storage are that there is no limit to how much you can store, and without taking up physical space. Cloud-based storage is probably safer than storing paper, which deteriorates over time and could be damaged by fire or water. To the extent possible and practical, consider two copies of permanent physical and paper records and documents, kept in separate physical locations.

Electronic storage in the cloud is much safer than filing in cabinets or on a personal computer. Data kept on a single computer could be irretrievable if that computer is damaged or stolen. Cloud storage means that the information stored is backed up by multiple servers, not all in the same place. If one goes down, there are always backups to protect the data stored on them. The same cannot be said of a single paper document locked in a filing cabinet or in a box in storage.

Retaining building documents for the requisite period is more than a legal requirement; it's also just good business. It covers the building's bases, so to speak, reducing potential vulnerability. For a building's management, preparing for an emergency also means having immediate access to all the information available on the building that could be critical.

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