

Fundamentals of Record Retention

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The information herein should not be regarded as a substitute for legal advice. Readers are strongly advised to consult an attorney and their professional liability insurance underwriter for advice regarding any matter related to document retention.

SUMMARY

This Best Practice offers a well rounded view of records retention. This article does not state exactly what to keep and how long to keep it but it offers assistance in the creation of a records retention plan.

NEW CHALLENGES

The volume and complexity of construction project records are increasing; electronic information is rapidly replacing written documentation; and the demands of document ownership, confidentiality, and security are becoming paramount.

Records management is essential to project management. While good records management may help protect firms from liability claims, it may also enable them to manage their profitability better and enhance their marketing efforts.

GOALS OF RECORDS MANAGEMENT

Managing information does not mean saving everything. Systems must be efficient and procedures clear and simple so that the records retention process does not interfere with the functions of the firm. An effective records retention policy should be in writing and should identify records by category, describe the length of time for retention, designate the methods of storage and destruction, and establish a protocol for determining whether documents that are not easily categorized should be retained or purged.

There are no absolute answers to the questions of what documents need to be preserved and for how long. But a well-considered policy will address both business needs and any applicable legal requirements.

TEMPORARY RECORDS OR DOCUMENTS

Each firm should determine what it considers to be “permanent” project records. Every project has “temporary” documents—the intermediate documents used to develop final documents. These include report drafts, handwritten logs and diaries, rough calculations, and draft sketches. Temporary documents should be discarded when a superseding document is created or when the project is completed.

PERMANENT RECORDS OR DOCUMENTS

Permanent documents include interim documents that are provided as milestone submittals or contract deliverables. Permanent documents also include all “final” documents and all project correspondence both sent and received. Handwritten telephone memoranda or site visit notes are “final” if not superseded by typed versions. Permanent documents also include all project correspondence, meeting memoranda and minutes, internal memoranda, logs, journals, and calendars.

In addition to professional service agreements and any subsequent modifications, drafts of contracts should be retained as permanent records because they document contract negotiations. In many instances, the final contract terms can be clarified by looking at what each party proposed, what objections were recorded, and what compromises were reached. Specific clauses, such as waivers and risk allocation provisions, may also be clarified if other contract terms were negotiated.

It is important to retain files for any project that suffered an unusual number of design, construction, personality, or financial problems, and for those projects in which new building products, systems, or methods of application were used.

Retain documents indicating that your services, recommendations, and judgments were in accordance with the applicable standard of care and your professional services contract.

ARCHIVING PROJECT RECORDS

Many factors affect the choice of an archiving process or system, including the following:

- What is the cost of the preservation and storage process?
- What system is used to retrieve documents?
- What statutes guide the length of time until destruction?
- What is the likelihood of claims occurring in the future?
- What historical value do the documents represent to the firm?
- What records are needed to comply with audits or government inquiries?

ELECTRONIC DOCUMENTS

The security of project records and their ease of retrieval are critical. Paper records are easily archived. Archiving computer files requires special attention. Specific procedures may include archiving a copy of the current version of the software with the data files and placing backup copies in separate locations. Concern for future accessibility leads some firms to record all project records through an imaging system.

The use of a properly authenticated record in a new technology is legally acceptable. Imaging techniques may determine later admissibility; an accurate process that duplicates the original records will help protect the firm.

DETERMINING THE RETENTION PERIOD

One of the principal factors to consider is the length of the statute of repose in your state or in the states whose laws govern each project. Retaining project records for one year past the longest applicable statute of repose is prudent.

Government projects may include detailed record-keeping obligations. Various federal, state, and local agencies have established rules, regulations, orders, advisory opinions, and administrative decisions that govern record keeping. In addition, you may be committed by contract to retain project records for the client's benefit.

Each firm needs to develop a timetable for destroying specific types of documents. It is essential that the destruction system is based on a logical methodology, and adherence to the schedule is vital.

IMPORTANCE OF RECORDS IN PREPARING A DEFENSE

In many jurisdictions, firms named as defendants in liability suits must immediately produce all relevant information. For this reason, many attorneys advise firms not to keep project records if they are in disarray or contain information that could be damaging to the firm. Firms should save only factual information—not poorly prepared information or opinions. The ability to produce and deliver records promptly can often forestall legal action.

The firm must maintain all records once it is involved in a legal dispute. This includes all electronic evidence such as e-mail messages. Spoliation of electronic documents can expose an unprepared litigant to court-imposed sanctions. With electronic records, there may be no way to separate privileged, proprietary, and highly sensitive materials.

Legal action may be aimed at discovering a “smoking gun,” learning trade secrets or proprietary information, or forcing the other party to settle. Records retention practices need to be carefully attuned to this problem; some firms require that e-mail messages be converted to paper copies for supervisory review and filing so that the potential discovery of electronic information unrelated to the legal action is limited.

THE VALUE OF AN EFFECTIVE POLICY

Document retention and destruction systems should be logical and easily administered. The management of project records can make the critical difference between a prolonged dispute with an unfavorable outcome or the ability to continue in productive practice. The real value of a firm's records and records management program lies in the role they play in helping to manage the firm profitably.

A RECORD RETENTION CHECKLIST

The types of records that should be preserved may include, but may not necessarily be limited to:

- Contracts, including any negotiation drafts, correspondence, and modifications
- Product research showing due diligence and findings
- The design criteria or standards program and project-specific criteria approved by the client
- Records of telephone conversations, including who was involved and what was discussed and decided

- Meeting minutes, both during design and construction
- Drawings and specifications, both milestone and final deliverables
- Calculations, reports, and correspondence—anything prepared by the firm or its consultants
- Approvals, including confirmation letters if no formal approval is provided
- Advisory letters, including the risks, recommendations, and informed consent responses
- Submittal logs, including dates and actions
- Site visit reports, including facts about each visit and observations while carrying out contractual duties
- Contractor correspondence, including all communications between you and the contractor, such as Requests for Information
- Change order data, including the circumstances and reasoning for changes
- Close-out documentation, including information on substantial and final completion and project-specific services, such as commissioning

LESSONS LEARNED

It is important to have a plan and to implement the plan firm-wide. Staff also must be made aware of what predicates temporary records and permanent records.

RESOURCES

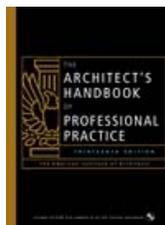
More Best Practices

The following AIA Best Practices provide additional information related to this topic:

- 10.01.03 Project File Organization
- 10.01.08 Project Records Retention
- 10.01.05 Document Disposal: When and How to Throw It Out

For More Information on This Topic

See also “Information Management,” by Elena Marcheso Moreno, *The Architect’s Handbook of Professional Practice*, 13th edition, Chapter 13, page 380.



See also the 14th edition of the *Handbook*, which can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by email at bookstore@aia.org.



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Key Terms

- Practice
- Information management
- Office information resources
- Office archives
- Records retention plan



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