



Practical Pointers Series

RECORDKEEPING RISK ASSESSMENT

Recordkeeping involves risk management. A land trust must choose which documents to keep and which ones to destroy. The risk arises from the fact that an organization may find that, despite its best efforts, it made the wrong decisions about the documents it decided to retain and those it destroyed. See Practice 9G of *Land Trust Standards and Practices* for more information on records and recordkeeping.

1. **Assess risks** of different storage systems, unavailable records and whether a particular document will be critical in court or necessary to answer an essential question. Assess what information you will need, how often you will need it, how irreplaceable it is and, finally, what laws govern certain records and their retention. In addition to your land trust's general counsel, ask an experienced litigator to review your recordkeeping policy and procedures.
2. **Tailor your system.** There are many ways to create, identify, collect, store, use, maintain, retrieve, retain and purge or destroy records. Your land trust records systems must be tailored to your land trust needs, mission and capacity, as well as future anticipated growth. A recordkeeping policy and procedure can help you keep records in order so that, if needed, you will only have to trawl through a reasonable amount of relevant information to find answers.
3. **Evaluate whether a document is essential.** For records pertaining to conserved properties, keep the minimum documents listed as essential to the transaction in [Practice 9G2](#). Use these questions to assist you and your attorney to identify additional records to retain:
 - a. Is the record a basic document that you will need forever, such as the conservation easement, the baseline documentation report or map, annual monitoring reports, amendments, supplements to the baseline or violation resolutions? If yes, keep it forever. If no, go to the next question.
 - b. Does the law require that the record be retained for a period of years? If yes, keep the record for those years plus one year. If no, go to the next question.
 - c. Is it a record that will help the land trust administer the conservation easement, fee ownership or an overall program? If yes, then retain the record forever. If no or not sure, go to the next question.
 - d. Is the record unavailable from the land records? If no, then go to the next question; if yes, keep it. (The one exception to this rule is the actual conservation easement deed because, as a practical matter, it is your central document.)
 - e. Does the record address an express purpose or conservation attribute of the conservation easement or fee land? If yes, then retain it forever. If no, go to the next question.
 - f. Does the record expressly, clearly and unambiguously address the intent of the original conservation easement grantor in a way not documented in the conservation easement or baseline documentation? If yes, then retain it forever. If no, go to the next question.

- g. Can anyone articulate a clear detailed example of a situation in which the document would be essential to prove a point in court not covered by the conservation easement or baseline documentation report? *Fear is insufficient here.* If in doubt, check with your attorney, and throw the document out if it is anything less than overwhelmingly helpful. If yes, then retain it forever. If no, go to the next question.
 - h. Could the document in any way be construed against the land trust and potentially damage the land trust or the conservation easement? If yes, throw it out. If no, next question.
 - i. Is it a financial record? If yes, keep for eight years. If no, go to the next question.
 - j. Is it a corporate or administrative record, such as bylaws, annual reports, newsletters, incorporation records, board minutes and resolutions, secretary of state filings and so forth? If yes, keep forever. If no, go to the next question.
 - k. Is the record an organizational policy or procedure? If yes, keep for as long as it is current. If no, go to the next question.
 - l. Is it a court order or other violation resolution? If yes, keep forever. If no, next question.
 - m. Is it a management plan? If yes, keep until you receive a full replacement update. If only partial updates, then keep the original plan. If no, go to the next question.
 - n. Is it an unexercised option to purchase, a right of first refusal or some other contingent interest in real estate? If yes, keep for the term of the interest or forever. If no, go to the next question.
 - o. Is it a government permit or approval? If yes, keep forever. If no, go to the next question.
 - p. Is it a survey or map? If yes, keep forever. If no, go to the next question.
 - q. Is it a title certificate, opinion, policy or similar title document? If yes, keep forever. If no, go to the next question.
 - r. Is the record essential, clear and unambiguous correspondence, e-mail or phone message regarding the original grantor's intent, representation or competency? If yes, keep forever. If no, go to the next question.
 - s. Is the record essential, clear and unambiguous correspondence, e-mail or phone message regarding a violation or violation resolution, the exercise of a reserved right or an interpretation of the conservation easement? If yes, keep forever.
4. **Know when to shred.** If you answer "no" to all questions, then shred the document or delete the electronic file. If you are unsure, consult your attorney. Tag unsure documents for later review. If, after that time, you still feel they do not meet any of the criteria and your attorney does not feel they are essential, then shred or delete.

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