

Standards and Practices

STANDARD 9 ENSURING SOUND TRANSACTIONS

G. Recordkeeping

- ▲ 1. Adopt a written records policy that governs how and when organization and transaction records are created, collected, retained, stored and destroyed

Accreditation indicator elements located at www.landtrustaccreditation.org

INTRODUCTION

Creating and managing records and files is central to land trust work. Land trusts need accurate and easily retrievable records to meet legal and contractual obligations, track and evaluate activities and be prepared to defend their property interests through enforcement and litigation. In the event of litigation, land trust records and the land trust's ability to locate supportive records and document their authenticity could be paramount. A well-designed and well-implemented records management system can help.

When information is fresh in mind, it is hard to think about methodically recording it for the future. A wise land trust, however, will plan for its future by *adopting appropriate board policies, creating detailed procedures* to implement those policies and *assigning personnel* to make sure the policies and procedures are followed.

WHY MAINTAIN RECORDS?

Keeping orderly and complete records is *good, common sense*. The amount of information a land trust must manage and recollect grows larger each year, and land trust work requires solid recordkeeping. For example, appropriate stewardship and management of conservation properties rely on good recordkeeping to demonstrate property conditions over the course of time. In addition, contractual agreements and grant programs may require land trusts to keep certain

records and reports to demonstrate their compliance and substantiate grant awards. Recordkeeping also helps with program evaluation, especially in the face of changing personnel and as an organization's activity increases. Finally, there are three legal reasons a land trust must keep good records:

1. *Sarbanes-Oxley Act of 2002*. In 2002, Congress passed the [Sarbanes-Oxley Act](#) in response to scandals and economic catastrophes caused by certain organizations' financial misdoings and accounting inaccuracies.

The regulations in Sarbanes-Oxley focus on corporate accountability, integrity of corporate financial records and transparency of corporate financial matters. Most of its provisions do not directly apply to nonprofit organizations. Nonprofits, however, are subject to the Act's expanded criminal obstruction of justice penalties for:

- The intentional destruction of records related to federal investigations, and
 - Retaliation against those who discover document destruction. The law also suggests that intentional document destruction should be a process that the land trust monitors, justifies and carefully administers. A records management policy can be critical to providing credibility for a land trust should its destruction of documents ever be questioned.
2. *IRS public disclosure requirements*. All public charities are required to make information available for public inspection and to provide copies on site or by mail upon request. This information includes:
 - A copy of the application for tax exemption (Form 1023/1023-EZ)
 - A copy of any supporting materials and IRS response to the tax-exempt application
 - Copies of the three most recent annual federal tax information returns (Form 990/990-EZ/990-N)

Names and addresses of contributors to the organization provided within the return may be omitted from disclosed materials.

Many land trusts meet the IRS disclosure requirements by posting their Form 990/990-EZ/990-N on a public website such as [GuideStar](#), a national database of nonprofit organizations, or on their own websites. [IRS publication 4221, Compliance Guide for 501\(c\)\(3\) Public Charities](#) provides an excellent overview of the variety of recordkeeping requirements applicable to these organizations.

3. *Protection of an organization's interests in the event of litigation.* Records provide evidence of property interests, property conditions and demonstrate encroachment and violations. Legal defense and litigation are highly fact-driven, and the protection of conservation interests will depend on the documentary evidence available to support a claim. Be aware that the method and regularity of recordkeeping are critical to documents' admissibility and credibility as evidence, as further discussed below.

In addition to protecting conservation properties, records also protect a land trust in the event of disagreements over contracts. State law (statute of frauds) typically requires certain agreements to be in writing if they are to be enforceable in a court of law. Most contracts or agreements involving land or ones that cannot be completed within one year must be in writing to be enforceable.

WHY HAVE A WRITTEN POLICY?

A records policy and related procedures can assist a land trust in a number of ways:

- *Organizational consistency and continuity.* A records policy will provide consistency for the land trust over time, no matter who is working with the data and records. This issue becomes increasingly important as a land trust grows and adds or changes personnel, whether volunteers or paid staff.
- *Efficiency.* Hours, if not days, can be wasted looking for information kept but not organized. A well-designed and implemented recordkeeping system can change that.
- *Admissibility of evidence in judicial proceedings.* Evidentiary law is built upon personal knowledge of a person testifying to a fact. Courts consider personal testimony the most credible because it gives all parties to any litigation an opportunity to ask appropriate questions. However, those with personal knowledge are not always available to testify when needed or may simply not remember critical facts. For example, a land trust representative who initially negotiates and completes a conservation easement no doubt personally knows the condition of the protected land and the reasons the land trust accepted the easement. But as time goes on, that person may no longer work at the land trust or even live in the area. If that easement is violated years later, how then will the land trust prove the original condition of the property?

Land trusts, like all businesses today, rely upon their records rather than personal knowledge or memories to manage important information. Courts have created a number of exceptions to the requirement of personal knowledge. They allow into evidence those records that are likely to be accurate and trustworthy while still allowing litigants to challenge the veracity of those records.

- *Business Records Exception*. The business records rule allows a record to be included in evidence in a judicial proceeding under the following conditions:
 - The record was created at or near the time (rather than later in anticipation of litigation)
 - The record was created by someone with direct knowledge — or who was given the information by someone knowledgeable
 - The record was created and kept in the course of *regularly conducted* business
 - It is the *regular practice* of the organization to create or maintain such records

Establishing and following formal records policies and procedures will enhance a land trust's ability to rely on the business records rule.

RECORDS CREDIBILITY

The principles discussed above relate primarily to the *admissibility* of documents and records into evidence, not to the *credibility or reliability* of those documents or records. Credibility, like admissibility, can be influenced by a land trust's recordkeeping policies and practices. Records created, managed and stored in a manner that is routine and protects against accidental or intentional alteration or loss are typically viewed as more credible.

A CAUTIONARY NOTE: A VIEW OF LAND TRUST RECORDS AND RECORDS POLICIES FROM THE OTHER SIDE

When a land trust is involved in litigation, the opposing parties will also have access to the land trust's files. As a result, land trusts should consider how their files might be used against them:

- A clever note written on the margin of an internal memo may look simply foolish later
- An unsubstantiated opinion of a volunteer monitor on a monitoring report may cause credibility problems if it is later contradicted by staff
- Multiple records on the same topic may be confusing or contradictory

Some attorneys caution a land trust to keep *only* those documents and records that are absolutely essential — rather than keeping as much information as possible in case it might be useful. Similarly, land trusts should construct policies and procedures with an eye toward the organization's ability to implement them. Policies and procedures that are adopted but not followed may be used as evidence that the land trust is not a credible organization.

WHAT CONSTITUTES A RECORD?

The first step in setting up a records policy is determining what constitutes a record. Land trust records may include information or data in any storable, retrievable format, such as:

- Documents, letters, memoranda, reports and handwritten notes, whether the original documents or copies, final versions of materials or interim drafts
- Photographs, including prints, negatives or digital files
- GIS data
- E-mails, both sent and received
- Voicemail and other audio recordings
- Compilations of data stored in databases, spreadsheets and software programs

Although all of these are records, they should not all be treated the same way. Those records most critical to a land trust's business should be handled with the greatest care.

CATEGORIES OF LAND TRUST RECORDS

All land trusts must keep a wide variety of records relevant to their many areas of practice. For example, every land trust should maintain:

- *Organizational (corporate) records.* These records include articles of incorporation and any amendments and bylaws (current and past), IRS public disclosure records, state charitable organization and nonprofit corporation records and reports, insurance policies
- *Board records.* These records include board minutes, resolutions and other records of corporate action, meeting notices and materials, lists of board members and officers (current and past), board policies and procedures, membership lists for organizations with voting members, delegations of authority to staff and others
- *Financial records.* These records include the general ledger, annual budget, periodic reports, including profit and loss and balance sheet, investment reports, restricted fund reports, cash flow analyses or any other reports needed to track income and expenses properly during the year, audits, tax filings, bank, investment and credit card statements, invoices, disbursements, income and deposits
- *Fundraising and donor records.* These records include donor substantiation, grant applications, awards and reports
- *Employment and personnel records.* These records include documents related to federal, state (and occasionally local) taxes, workers compensation, W-4s and W-2s, I-9s, resumes and job applications, individual staff files (current and past), including job descriptions, performance reviews, salary information and time and leave records
- *Program files.* These records include lobbying records, if applicable, strategic and other planning records, records related to public programs and communications information, such as copies of newsletters, annual reports and other publications
- *Transaction and property files.* These records include legal agreements, baseline documentation reports, title insurance policies, surveys, appraisals, Forms 8283, monitoring reports, notices and approvals, contracts and leases for long-term management activities. For more on recordkeeping for conservation easements and land transactions see [Practice 9G2](#).

ELEMENTS OF A RECORDS POLICY

Land trust policies and procedures on recordkeeping take a variety of forms. The size of each land trust and the scope of its activities dictate how it approaches recordkeeping, including whether the process is managed by the board or staff, the complexity of its records management system and the level of detail needed.

Consider:

- *Not all land trusts are the same.* A land trust's records policy will be influenced by the:
 - Nature and complexity of the land trust's mission, finances and programs
 - Age and maturity of the organization
 - Size of the staff and budget
- *Not all records are the same.* Different types of records require different policies and procedures:
 - Human resource and donor records require increased confidentiality protection
 - Financial records require specific attention to detail and accuracy
 - Land and conservation easement project files need to be maintained with an eye toward perpetuity

Regardless of its size or program, however, every land trust's record management system and its recordkeeping policies and procedures should include at least the following elements:

1. Purpose or philosophy of recordkeeping
2. Document and data creation
3. Document maintenance and storage
4. Document retention periods and destruction

PURPOSE OR PHILOSOPHY OF RECORDKEEPING

Before addressing details, a land trust should examine and clarify its own philosophy or approach to recordkeeping. That approach will then govern specific procedures. For example, one land trust may choose to focus on potential litigation and state that one of the purposes of its records policy is to “create and maintain records in anticipation of litigation.” A land trust with this approach may focus on the formalities of complying with the business records rule.

Another land trust may identify its purpose is to “collect and keep the minimum amount of information necessary to prepare required reports and meet internal problem-solving needs.” This land trust may rely more on electronic databases than extensive paper files. It may be willing to accept the consequences of not having as complete a file as another land trust might maintain.

The philosophy or recordkeeping approach identified in a land trust’s records policy determines what material to keep and how. Not only will different land trusts have different approaches to recordkeeping, different philosophies or approaches may apply to different types of land trust records. For example, property records may require a different process or system of recordkeeping than programmatic records.

DOCUMENT AND DATA CREATION

A land trust records policy should address generally *what* information a land trust will collect and keep. The policy may include *protocols* of document creation.

Paper document protocols might address details such as:

- How to handle copies versus originals
- Naming files and documents
- Identifying author and dates of creation and revision

Computer protocols might address:

- Naming and labeling files and folders
- Consistency of organization with paper files
- Identifying author and versions of documents
- Eliminating the visibility of “changes” or “comments” tracked during drafting

See Practices 9G2 and 9G3 for additional discussion of protocols for paper and digital files.

DOCUMENT MAINTENANCE AND STORAGE

Records policies should address how and where information is kept and organized.

Issues to consider include:

- *Who needs access to records - board, staff, volunteers, the public? Which records? How quickly? How often? When should access be limited? How should access be limited?* The need for access can often be contradictory to the need for confidentiality or security. Internal computer networks and external websites can make access easier but require additional attention to security and confidentiality.
- *How will files or records be organized?* A well-crafted system for organizing files and records will save time in filing and in retrieving information.
- *Where will records be stored, and what is the location’s security?* What are the land trust’s options for storage: onsite, offsite, fireproof safe, safe deposit box and so forth? What are the risks of loss, destruction or unauthorized access, and what are the consequences? If the land trust does not have an office, who will keep its documents? How can the land trust be assured of the integrity and safety of its documents?
- *What will it cost to keep information (time, dollars and space)?* Every filing and recordkeeping option has a cost. Costs of various options must be balanced against their benefits. Land trusts should carefully evaluate how much to invest in recordkeeping so as not to shortchange their programmatic activities.
- *Contingency planning. When should computer files be backed up? Where should backups be stored?* As noted above, electronic files require different handling than paper files.

For more information on storage considerations, see Practices 9G2 and 9G3.

DOCUMENT RETENTION PERIOD AND DESTRUCTION

A records policy should address how long to keep records, and when and how to destroy them.

Issues to consider include:

- *How long should information be kept? For how long is a land trust required to keep certain records? For how long might the records be useful?* Even in its early stages, a land trust will not want to keep every piece of data collected or every piece of paper created. For example, every day a land trust receives email and regular mail that it immediately deletes or tosses as unneeded for its programs.

Retention periods will differ for different documents, as illustrated by the following examples:

- The IRS requires tax-exempt public charities to keep and make available to the public (at a minimum) the three most recent IRS Form 990s
- A multiyear grant agreement should be kept for at least the length of the grant
- Certain documents concerning properties conserved in perpetuity, such as conservation easement monitoring and enforcement records, should be kept permanently

As noted above, relevant statutes of limitations may mandate retention periods for certain documents. For example, in many states, a lawsuit regarding the breach or violation of a contract must be brought within six years of the breach or violation's occurrence. Therefore, a land trust may choose to keep records on contracts for only six years following completion or cancelation of the contract on the theory that its records will no longer be necessary after that time. Most organizations are conservative in their document destruction practices, keeping documents a year or so longer than legal or utility requirements dictate.

- *What are the costs of keeping documents versus the risks of destroying them?* It costs time and money to keep documents forever. They take up space — somewhere. However, once destroyed a document may be lost forever. Does it matter? How much?
- *Are the documents also kept by others? How easy would it be to get those documents?* A deed or conservation easement agreement may be the most important document in a property file. However, it may also be the most easily replaced by obtaining a copy from the official land records. In contrast, a letter sent to a landowner noting an easement violation may be impossible to reproduce if the land trust has not kept a copy in its file.

A records policy may set forth guidelines for keeping records within a records retention schedule. An example of such a schedule can be found in [Sample 2](#), as well as other sample policies provided on the [Learning Center](#). A land trust should consult with its own attorney, accountant, auditor or other advisor in creating its retention schedule.

- *How should records be destroyed?* Shredding, recycling, the garbage? How do confidentiality and privacy concerns affect this decision? For digital files including email, simply deleting the file from the program may not completely destroy or eliminate the file.

RECORDKEEPING RESPONSIBILITIES

The records policy or procedure should assign record creation, maintenance and destruction responsibilities to designated staff or volunteers. Responsibilities can be spread among various personnel, but assignments should be clear. For example, responsibility for different categories of records may be assigned to the different people responsible for those categories of work: the treasurer, accountant or bookkeeper may be responsible for financial records, while the development associate or membership coordinator is responsible for donor files. On the other hand, a land trust may assign overall records responsibility to a particular person, such as to the board secretary or compliance-focused officer or staff. *Don't forget to review policies over time.* A land trust should review all of its policies and practices periodically, including those related to recordkeeping. Whatever policy and procedures it adopts, a land trust should document that it has followed its policies, including documenting any policy or procedure reviews.

Land trusts needing advice in setting up recordkeeping systems should consider consulting with a local information systems company or even a local librarian. Auditors and board members can also be sources of information and assistance.

🌀 **For accreditation, a recordkeeping policy must include organization, transaction and stewardship records and address records management.**

ADDITIONAL RESOURCES

- [Records Management Policy Template, Sample 1](#)
- [Records Policy Template, Sample 2](#)