

ASSOCIATION
TOMES, SCROLLS
&
MANUSCRIPTS

Presented by, Kevin V. Harker

ASSOCIATION TOMES, SCROLLS & MANUSCRIPTS

ASSOCIATION RECORDS

- WHAT IS AN ASSOCIATION RECORD?
- OWNER ROSTERS
- TAPE RECORDINGS

I. Record Retention

A. Applicable Statutes

1. Condominiums - ORS 100.210; ORS 100.480(1); ORS 65.771
2. Planned Communities - ORS 94.670(1); ORS 65.771

II. Statutory Retention Periods

A. Permanent Records

1. The following documents, if received (at turnover):
 - a.. As-built architectural, structural, engineering, mechanical, electrical, and plumbing plans. ORS 100.480(1)(a); ORS 100.210(5)(j)(A); ORS 94.670(1)(a); ORS 94.616(3)(o)(A).
 - b. Original specifications indicating thereon all material changes. ORS 100.480(1)(a); ORS 100.210(5)(j)(B); ORS 94.670(1)(a); ORS 94.616(3)(o)(B).
 - c. Plans for underground site service, site grading, drainage and landscaping together with cable television drawings. ORS 100.480(1); ORS 100.210(5)(j)(C); ORS 94.670(1)(a); ORS 94.616(3)(o)(C).
 - d. All other plans and information relevant to future repair or maintenance of the property. ORS 100.480(1); ORS 100.210(5)(j)(D); ORS 94.670(1)(a); ORS 94.616(3)(o)(D).
 - e. A list of the general contractor and the electrical, heating and plumbing subcontractors responsible for construction or installation of common property. ORS 94.670(1)(a); ORS 94.616(3)(o)(E). Does not apply to condominiums.
2. Minutes of meetings of members. ORS 65.771(1).
3. Minutes of meetings of board of directors. ORS 65.771(1).

4. Corporate action taken by members or directors without a meeting. ORS 65.771(1).

5. Records of all actions taken by committees of the board of directors in place of the board on behalf of the association. ORS 65.771(1).

6. Resolutions adopted by the board relating to characteristics, qualifications, rights, limitations and obligations of members. ORS 65.771(5)(c).

B. Three years

1. All written communications with the prior three years required by ORS Chapter 65 (Oregon Nonprofit Corporation Act). ORS 65.771(5)(e).

2. All written communications made to members in prior three years. ORS 65.771(5)(e).

C. One year

1. Proxies and Ballots-one year from date of determination. ORS 100.480(1)(b); ORS 94.670(1)(b).

Recommendation: Retain proxies and ballots for amendments to governing documents which need to be recorded for one year from date of recording the amendment.

D. Current Only

a. Articles of Incorporation and amendments currently in effect. ORS 65.771(5)(a).

b. Bylaws and amendments currently in effect. ORS 65.771(5)(b).

c. List of names and business or home addresses of the current directors and officers. ORS 65.771(5)(f).

d. Most recent annual report delivered to the Secretary of State. ORS 65.771(5)(h).

E. Indefinite

1. Financial Records - sufficient for proper accounting. ORS 100.480(2); ORS 94.670(3); ORS 65.771(2).

a. The last three annual financial statements, if any, must be available for inspection. ORS 65.771(5)(g).

b. The last three accountant's reports if annual financial statements are reported by a public accountant, must be kept for inspection. ORS 65.771(5)(h).

2. Types of Financial Records

- a. Accounts payable and receivable ledgers
- b. Bank statements, cancelled checks
- c. Certificates of deposit
- d. Budgets
- e. Inventories
- f. Invoices
- g. Billing records
- h. Notes payable and receivable
- i. Purchase orders
- j. Tax or accountant Audits
- k. Tax Returns
- l. Tax documents supporting preparation of tax returns
- m. Financial Statements
- n. Accountant reports
- m. Other asset records

F. Recommended Non-Statutory Retention Periods

- 1. Contracts - ten years from date of completion of contract
- 2. Insurance Policies - ten years
- 3. Insurance Claims-ten years
- 4. Legal files-pleadings, judgments, other documentation - ten years
- 5. Tapes of board and association meetings - one
- 6. Miscellaneous records - ten years

III. Disclosure And Inspection of Records

A. Who may inspect. ORS 94.670(8); ORS 100.480(8)(a).

1. Owners

2. Mortgagees

B. What may be examined. ORS 94.670(8); ORS 100.480(8)(a).

1. All records of the association must be reasonably available for examination, except:

a. Personnel matters relating to specific identified person or person's medical records. ORS 94.670(8)(a); ORS 100.480(8)(b)(A).

b. Contracts, leases, and other business transactions under negotiation. ORS 94.670(8)(b); ORS 100.480(8)(b)(B).

c. Communications with legal counsel that relate to matters (a) and (b) above. ORS 94.670(8)(c); ORS 100.480(8)(b)(C).

d. Disclosure which would be in violation of the law. ORS 94.670(8)(d); ORS 100.480(8)(b)(D).

e. Documents, correspondence, management or board reports compiled for board or association by agents or committees for consideration by board in executive session. ORS 94.670(8)(e); ORS 100.480(8)(b)(E).

f. Documents, correspondence, or other matters considered by board in executive session. ORS 94.670(8)(f); ORS 100.480(8)(b)(F).

g. Files of individual owners. ORS 94.670(8)(g); ORS 100.480(8)(b)(G).

2. Must provide records within 5 business days. ORS 65.774(1).

C. Duplication of Records ORS 94.670(8).

1. Request must be in writing

2. Request must be in good faith and for a proper purpose

a. The purpose and the records the member desires to inspect must be described with reasonable particularity. ORS 65.774(3)(b).

b. Records must be directly connected with the purpose. ORS 65.774(3)(c).

D. Association must keep a copy, suitable for duplication, of certain records:

1. Which records

- a. Declaration and bylaws, including amendments and supplements currently in effect; and recorded plat, if feasible. ORS 94.670(9)(a); ORS 100.480(9)(a).
- b. Current rules and regulations. ORS 94.670(9)(a); ORS 100.480(9)(a).
- c. Most recent financial statement. ORS 94.670(9)(b); ORS 100.480(9)(b).
- d. Current operation budget. ORS 94.670(9)(c); ORS 100.480(9)(c).
- e. Reserve study. ORS 94.670(9)(d); ORS 100.480(9)(d).
- f. Architectural standards and guidelines. ORS 94.670(9)(e); ORS 100.480(9)(e).

2. These records must be furnished within 10 business days of request. ORS 94.670(10); ORS 100.480(10).

E. By resolution, Board may establish reasonable rules. ORS 94.670(11), ORS 100.480(11).

- 1. Governing frequency, time, location, notice and manner of examination and duplication of records
- 2. May impose reasonable fee for furnishing copies of documents
 - a. May include reasonable personnel and material costs for furnishing documents. ORS 94.670(11); ORS 100.480(11); ORS 65.777(3).
 - b. The charge may not exceed the estimated cost of production or reproduction of the records. ORS 65.777(3).

IV. Attorney Client Privileged Documents and Communications

- A. Once disclosed, privilege may unintentionally be waived.
- B. Take special precautions to prevent inadvertent disclosure.
- C. Do not disclose without a court order.
- D. Do not share opinion letters with membership.

Caveat: If the board is making a decision based upon attorney advice and feels the need to state that at a meeting, the board should not disclose what the attorney has told them. Instead, the communication at the board meeting should be: "After consulting with counsel, the board has decided to take the following action" or words to that effect. By stating what the Association's attorney has advised, the board could unintentionally waive the attorney-client privilege with respect to that matter.