

**OREGON SOCIETY
OF
CERTIFIED PUBLIC ACCOUNTANTS**

**Document Handling & Records
Retention Guidelines**



**The Oregon Society of CPAs
PO Box 4555
Beaverton, Oregon 97076-4555
503.641.7200 / 1.800.255.1470
www.orcpa.org**

**Prepared for the Oregon Society of CPAs
by
Mark E. Friedman, Attorney At Law
Garvey Schubert Barer
www.GSBlaw.com
Portland, Oregon**

****THESE GUIDELINES ARE DESIGNED TO PRESENT ONLY GENERAL INFORMATION ON A BROAD RANGE OF ISSUES RELATING TO RECORDS MANAGEMENT AND RETENTION BY ACCOUNTANTS. THE OREGON SOCIETY DOES NOT INTEND THESE GUIDELINES TO BE AND SHOULD NOT BE RELIED UPON AS LEGAL ADVICE. OREGON COURTS HAVE NOT ESTABLISHED GUIDANCE ON THE SUBJECT OF RECORDS RETENTION BY ACCOUNTANTS. BEFORE DESIGNING OR IMPLEMENTING A PERSONALIZED RECORDS RETENTION POLICY, YOU SHOULD CONSULT A QUALIFIED ATTORNEY.****

I. INTRODUCTION

The Enron/Andersen debacle raised public awareness of retention and destruction of records in business and financial environments. There is greater focus on accounting firms to develop and maintain legally proper and ethically compliant record retention and destruction policies. Despite this focus and potential liability exposure for accountants regarding working papers and client records, there is little guidance in Oregon law to assist accountants on the issues associated with document retention. In publishing these guidelines, the Oregon Society of Certified Public Accountants seeks to assist practicing accountants and firms establish their own policies that meet or exceed current legal requirements and professional standards.

In the handling of client records and working papers included in any engagement file, accountants expose themselves to various risks. Examples include, an accountant's involuntary involvement in client litigation when retained documents are subject to subpoena or disclosure, potential liability arising from improper destruction of documents during any investigation or litigation, and direct professional liability lawsuits. It is therefore important for any accountant to consider adopting a records retention policy to reduce the risks involved in the handling of documents.

II. BASIC CONSIDERATIONS

In creating a records retention policy, your firm should first bear in mind the following fundamental considerations:

- What is the **level of client service** your firm wants to provide? Accounting firms can provide more levels of service to their clients by becoming document depositories.¹ If your firm can effectively store client records, such services could encourage future engagements. In doing so, however, your firm arguably becomes an *agent* in assuming the responsibility of retaining client records, and consequently has a duty to act with a certain standard of care in handling such documents.² The standard of care imposed on the client for retention of its own records cannot be obviated when the accountant retains the client's records. Thus, the standard of care ordinarily applicable to the client's own retention of documents may be the standard of care applicable to the accountant's handling of the client's records.
- What are your firm's **specific areas of practice** and what **types of documents** does your firm typically handle? Statutory and regulatory record retention requirements vary among different areas of accounting practice and types of documents. Your firm may want to

allocate different record retention periods to the various areas of service and types of clientele, and may need to distinguish among types of documents.

- What about the **costs of storage and space limitations**? The longer records are retained, the greater financial burden on your firm. Typically the cost of implementing a records retention program is not billable to the client (except as part of overhead).³
- How might the **client's document retention policy** affect the firm's retention of client records? If the two policies do not have the same retention schedules, the firm risks retaining client records longer than expected, or destroying records prematurely, and thus risking uninvited legal consequences and client relationship problems.
- How will the firm's **electronic records** fit into the retention policy? Electronic records are treated the same as tangible documents during litigation.¹ Therefore, electronic records must be preserved and destroyed, as are tangible documents, to minimize or avoid adverse legal consequences.ⁱⁱ
- What is the **impact of potential litigation**? Among many considerations, retention of records for too long can expose the accountant to indirect or inadvertent involvement in litigation. Premature destruction of records may negatively impact a professional liability defense,⁴ if the accountant is accused of breaching a duty of care while in possession of client records or performing services.

The aforementioned considerations must be incorporated into any policy and retention schedule developed. **Your firm will need to decide what records to keep, for how long, and how to appropriately dispose of them when the retention period comes to an end.** It is recommended that you work with qualified legal counsel in developing any retention policy, as statutory and regulatory requirements particular to your practice areas and to your clients' records must be considered.

The record retention program developed should be focused on a retention and destruction *policy*, and may or may not be supplemented by a retention *schedule*. A record retention "schedule" provides a list of documents retained along with prescribed retention periods. A record retention "policy," on the other hand, should encompass more than just retention periods.⁵ A policy should address the reasons and methods for retention and destruction of documents, and a well-considered statement of when, how and why to stop the destruction of documents.

ⁱUnder Oregon federal and state court rules, requests for production of documents specifically include any "data compilations from which information can be obtained." Courts have held that relevant electronic data is discoverable. *See Anti-Monopoly, Inc. v. Hasbro, Inc.*, 1995 US Dist LEXIS 16355 (SDNY). Also, stored magnetic data is a record within the meaning of the federal tax regulations. Rev. Rul. 71-20.

ⁱⁱ Specifically addressing electronic records in your retention policy will ensure those records are managed properly so that in the event of litigation, the human hours spent reviewing digital documents for discovery will be minimized.

Any records retention policy should be worded carefully to ensure that all records subject to the policy have been retained pursuant to a **good faith, consistently applied practice in the ordinary course of business**.⁶ In determining whether a policy has been established in “*good faith*,” and maintained “*in the ordinary course of business*,” various courts have taken into account the following considerations:

- (1) whether the document destruction policy is established in order to limit or eliminate damaging evidence during actual or potential litigation, exemplifying “bad faith;”⁷
- (2) whether the policy prescribes reasonable retention periods given the nature of the documents subject to the policy;⁸
- (3) whether documents are destroyed in an inconsistent manner;⁹ and,
- (4) whether documents are destroyed reliant on an otherwise proper retention schedule when the firm has knowledge that those documents may reasonably be relevant to any pending or threatened litigation or investigation.^{10 iii}

Once a decision is made to retain documents for a period of time, and when and how destruction will occur, it is important that this policy be **memorialized in writing**.¹¹ Further, you may consider including language in your *client engagement letters* that addresses issues pertaining to record retention. If a client wants or needs documents retained for a longer period than stated in the accounting firm’s written retention policy, it is possible that the client may be willing or required to share or bear the expense of longer-term or specialized retention.¹² When the firm’s standard level of service is clearly stated, a particular client’s needs that exceed that level forms the basis for additional fees.

After adopting a records retention policy, it should be reviewed annually and updated, if necessary, in light of changing legal requirements, professional standards and costs of retaining records.¹³

ⁱⁱⁱ There is no conclusive authority requiring accounting firms to take affirmative steps to learn of document relevance in any threatened or pending litigation or investigation. *But see, Lewy v. Remington Arms Co., Inc.*, 836 F.2d 1104 (8th Cir 1988). Nevertheless, prudence may dictate that the firm take such affirmative action and inquire *with the client* into any threatened or pending litigation or investigation as part of its pre-destruction review.

ANY RECORDS RETENTION POLICY SHOULD:

- **BE A GOOD FAITH,**
- **CONSISTENTLY APPLIED PRACTICE,**
- **IN THE ORDINARY COURSE OF BUSINESS, AND**
- **MEMORIALIZED IN WRITING.**

III. RETENTION

This section explains the various factors to consider in determining which documents to retain and for how long. Generally, the most important considerations are the legal requirements pertaining to document retention, cost to the firm of retaining the documents, the firm's own needs to access the documents, and the client's needs to access.¹⁴ The unique nature and circumstances of your practice should also be taken into account. For example, accountants who specialize in tax preparation should probably retain client tax records until the limitation period for challenging tax returns has run.¹⁵ Finally, consideration of the client's retention policy may dictate longer or shorter retention periods.

A. GENERAL LEGAL REQUIREMENTS

In determining a reasonable and legally proper retention period for both working papers and client records, the firm should keep the following considerations in mind:

- (1) whether there are any regulations that specify *mandatory retention* or a *mandatory retention period*;
- (2) whether there are any other regulations or professional guidelines that provide *direction* in determining the appropriate length of time to retain certain documents; and
- (3) the length of time the documents would be retained pursuant to the client's own record retention policy.

1. Legal Distinction between Working Papers and Client Records

Accountants have an affirmative *legal duty* to retain working papers.¹⁶ **Working papers** are "statements, records, schedules, general ledgers, journals, trial balances and depreciation schedules made by [an accountant] incident to or in the course of rendering services to a client or former client."¹⁷ "Working papers are and shall remain the property of the accountant" absent an express agreement to the contrary.¹⁸

An accountant must adopt a records retention policy for working papers. Oregon regulations require that an accountant’s retention procedure be “reasonable” and ensure “the safe custody of working papers.”¹⁹ Furthermore, the regulations dictate that retention periods must be “sufficient to meet the needs of the licensee’s practice and to satisfy applicable professional standards and pertinent legal requirements for record retention.”²⁰

**OREGON ACCOUNTANTS MUST
ADOPT A REASONABLE RECORDS
RETENTION POLICY FOR *WORKING
PAPERS*.**

Additionally, accountants may *choose* to retain client records. **Client records** are “accounting or other records” that belong to or were “obtained from or on behalf of the client or former client that the [accountant] received for the client’s account or removed from the client’s premises.”²¹ Once an accountant opts to retain client records, statutory and/or regulatory retention requirements that govern the client’s own retention of records arguably may dictate the standard of care the accountant must exercise as the client’s document retention agent or bailee.²²

When retaining client records, the accountant must also be aware of any record retention policy of the client. There may be legal risks involved if the accountant’s retention policy results in either (1) client records being *destroyed before* the client’s expectations; or (2) client records being *retained after* the client expects destruction. It is therefore critical that the firm discusses and resolves any conflict in retention policies with the client prior to becoming the client’s document depository.

**IF RETAINING *CLIENT RECORDS*, BE
AWARE OF:
(1) LAWS THAT REQUIRE THE CLIENT
TO RETAIN CERTAIN RECORDS; AND
(2) THE CLIENT’S OWN RETENTION
POLICY.**

2. Statutes of Limitation

Statutes of limitation are often useful in determining the length of retention periods. Statutes of limitation, sometimes referred to as limitations of action or limitations periods, specify the time period when a legal action or lawsuit may be initiated.²³ When an accounting firm opts to become a document depository for its clients, it should be concerned with the periods of

limitation for legal actions that could possibly be brought against its clients, as the firm may be subpoenaed to produce a client's documents in legal actions commenced within that time period.

In fact, according to the AICPA's "Management of an Accounting Practice" manual, the recommended records retention period for engagement files should track the particular state statute of limitations periods of the state where the accountancy practice is conducted. If the firm has a multi-state practice, conducting business outside of Oregon, for example, the longest state's limitations period should govern the retention of all the firm's records, as attempts to use different retention periods create logistical difficulties.

In Oregon, the following statutes of limitation are of primary concern:

- Actions based on a contract must be commenced within **six years**.²⁴
- Tort actions (which cover injuries to a "person or rights of another, not arising on contract") must be brought within **two years**. Actions for professional malpractice are generally governed by the tort limitations period.²⁵
- Actions based on libel or slander must be commenced within **one year**.²⁶

**UNDER OREGON STATUTES OF
LIMITATION, THE LONGEST
DOCUMENT RETENTION PERIOD
COULD BE CONSIDERED AS 6
YEARS.**

3. Laws Requiring Retention

Oregon regulations require that accountants adopt reasonable procedures for the safe custody of working papers and "retain working papers for a period sufficient to meet the needs of the licensee's practice and to satisfy applicable professional standards and pertinent legal requirements for record retention."²⁷

When litigation is pending or foreseeable, usual procedures for record destruction may have to be suspended.²⁸ Oregon regulations provide that accountants must retain working papers during the pendency of any Oregon Board of Accountancy investigation, disciplinary action, or other legal action involving the accountant. Accountants are prohibited from disposing of such working papers "until notified in writing by the Board of the closure of the investigation or until final disposition of the legal action or proceeding if no Board investigation is pending."²⁹

**CLIENT RECORDS AND ACCOUNTANT
WORKING PAPERS RELEVANT TO ANY
LEGAL ACTION OR INVESTIGATION
MUST BE RETAINED THROUGH THE
FINAL DISPOSITION OF THE LEGAL
ACTION OR INVESTIGATION.**

Although the *Public Company Accounting Reform and Investor Protection Act of 2002* (Sarbanes-Oxley Act of 2002) only applies to the auditing of public companies, Oregon accountants practicing in all other areas should be aware that there may be corresponding state or federal regulatory enactments setting new standards that impact accounting firms that do not audit public companies.³⁰

B. SPECIAL RULES FOR DISTINCT AREAS OF PRACTICE^{iv}

1. Audits

a. Generally

Auditors should prepare and maintain working papers designed to meet the particular circumstances of each audit.³¹ The auditor is not expected to retain documentation of *all* the evidence obtained during an audit and in support of the conclusions reached during a particular engagement.³² *Statement on Auditing Standards, "Audit Documentation,"* (SAS No. 96) does require that the **auditor adopt reasonable procedures for retaining audit documentation** so that the records (working papers and supporting client records) are maintained for a sufficient period of time "to meet the needs of his or her practice and to satisfy any applicable legal or regulatory requirement."³³ The retention period should be long enough so that the auditor can access the records throughout any retention period prescribed by state regulations.^{v 34} The retention procedure should also be designed to ensure the auditor's ability to access *electronic audit documents* throughout the retention period.³⁵

b. Audits of Publicly Held Companies

Under the *Public Company Accounting Reform and Investor Protection Act of 2002*, a Public Company Accounting Oversight Board is created that has authority to establish standards for audits of public companies.³⁶ This oversight board has no jurisdiction over the work of accountants in auditing other companies.³⁷ Although the oversight board generally has

^{iv} This section is intended to provide general guidance, and examples of retention policy considerations for specific practice areas. It is recommended that accountants consult a qualified attorney for more details about records retention applicable to the firm and its specific practice area.

^v SAS No. 96 also specifies that the retention procedures should be designed to maintain confidentiality of client information contained in audit documents.

discretion to adopt standards, the Act specifies that the “Board” *must* include as a provision that **public company auditors are required to retain audit work papers and related information sufficient to support each audit’s conclusions for at least *seven years*.**³⁸ Furthermore, the oversight board has power to “require firms to retain their records for inspection purposes regardless of whether retention of those records is otherwise required.”³⁹

**WORKING PAPERS FOR AUDITS OF
PUBLIC COMPANIES MUST BE
RETAINED FOR *SEVEN YEARS*.**

2. Tax Preparation

a. Oregon Law

In Oregon, tax professionals must retain records of tax returns prepared for the client, or in the preparation of which advice or assistance to the client is given. The **records of the returns must be retained for “a period of not less than four years after the date of the preparation, advice or assistance.”**⁴⁰

The Oregon Department of Revenue is governed by the following limitations periods when initiating any action for a tax deficiency:⁴¹

- In general, an action for a tax deficiency must be commenced within *three years* after the return was filed;
- If the Department of Revenue finds that the taxpayer understated his or her income by 25% or more, then an action for deficiency may be initiated any time within *five years* after the return was filed.
- Limitations periods do not apply to a deficiency resulting from false or fraudulent returns, or in cases where no return has been filed.^{vi}

b. Federal Law

Every taxpayer must keep their tax records as the IRS requires.⁴² Tax records must be “retained so long as the contents ... may become material in the administration of any internal revenue law.”⁴³ Records supporting items in a tax return generally should be retained until the expiration of the limitations period for that return.⁴⁴ Following are the most notable tax periods of limitation:

^{vi} It is not recommended that firms base retention periods on any unwarranted expectation of fraud, as retaining documents indefinitely may prove unmanageable.

- Tax must be assessed and imposed within **3 years** after the return is filed.⁴⁵
- In the case of a false or fraudulent return with the intent to evade tax assessment, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment at any time.^{vii 46}
- “If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within **6 years** after the return was filed.”⁴⁷

The limitations periods “refer to the period beginning after the return was filed” and “returns filed before the due date are treated as being filed on the due date.”⁴⁸

**UNDER *TAX* STATUTES OF
LIMITATION, THE LONGEST
PRACTICAL RETENTION PERIOD
COULD BE CONSIDERED AS 6 YEARS.**

IV. DOCUMENT DESTRUCTION

1. HOW TO DESTROY DOCUMENTS

In destroying documents, it is important the actual, intended destruction is ensured! If a document, particularly a client record, meant for destruction instead ends up in the hands of an adversary or competitor, the firm will likely face an angry client, the possible defense of a malpractice action, and a tarnished professional reputation.⁴⁹

Some firms now use document destruction services, which are companies that specialize in the secure destruction of even the most confidential documents.⁵⁰ If your firm uses a document destruction service, make sure to ask the following questions:⁵¹

- Is the company licensed, bonded and insured?
- Will the company provide separate receptacles at the firm’s office in which documents to be destroyed can be securely placed before pick-up and/or destruction?
- If the firm chooses to have in-house document destruction, can a firm employee witness the destruction process? Monitoring the shredding of the firm’s documents should leave no doubt as to whether the documents were destroyed and can be especially important in handling the firm’s most confidential documents.

^{vii} See footnote vi.

- What happens to the firms' documents after pick-up and/or destruction? Is the material shredded in a secure environment?

2. *WHEN TO STOP DESTROYING DOCUMENTS*

STOP the destruction of documents in an engagement file during any current or probable litigation or investigation of the firm, its accountants or its clients, in which *those* documents could potentially be relevant. Written policies will not necessarily provide a legal defense for the wrongful destruction of evidence, and intent to destroy incriminating evidence may be inferred!⁵²

3. *LEGAL CONSEQUENCES OF IMPROPERLY DESTROYING DOCUMENTS*

If documents are destroyed during litigation or an investigation of the firm, its accountants or its clients, "bad faith"^{viii} may be inferred and can result in serious and adverse legal consequences.⁵³ The New York Society of CPAs lists six significant legal risks a practitioner may face if document destruction does occur in bad faith:

- (1) **Criminal sanctions, fines or penalties** for spoliation of evidence.⁵⁴ "Spoliation" is a legal term used to describe the intentional destruction or concealment of evidence, usually in the form of a document.⁵⁵
- (2) **Contempt of court** for failure to comply with a subpoena or court-ordered disclosure.⁵⁶
- (3) Court-ordered **judgment by default** and the assessment of damages in cases involving extreme bad faith by the accountant in destroying relevant documentary evidence.⁵⁷
- (4) **Discovery sanctions**, including the payment of costs incurred as a result of the improper document destruction by the accountant.⁵⁸
- (5) An "**adverse inference**" instruction that permits the jury to infer the destroyed documents would either have favored the other party or harmed the legal position of the party having destroyed the documents.⁵⁹
- (6) A party wrongfully destroying documents may, in some states, face independent **civil liability** for the tort of spoliation of evidence.^{ix 60}

In Oregon, a party who intentionally destroys evidence, including documents, is guilty of a misdemeanor.⁶¹ Evidence destruction issues apply equally to tangible documents and electronic records.⁶² One may defeat a claim of spoliation by showing that records were destroyed pursuant

^{viii} For examples of "bad faith," see "BASIC CONSIDERATIONS" above.

^{ix} There is not an independent civil claim in Oregon for spoliation of evidence, although spoliation could result in other sanctions.

to a reasonable, good faith and consistently enforced written record retention policy.⁶³ However, even under a retention schedule, the destruction of records that are known to be relevant in a legal dispute or investigation will not defeat a claim of spoliation or support a good-faith defense in a legal action.

4. *LITIGATION OR ADVERSE LITIGATION CONSEQUENCES*

Establishing a reasonable and workable retention policy can be a balancing act. Premature destruction of working papers or client records may raise serious questions about the reasons for taking that action, or leave an accountant defenseless in professional malpractice litigation. Retention of documents for too long can be a burdensome financial drain on the firm and presents continued exposure to indirect or inadvertent involvement in litigation.⁶⁴ For example, one court has held that the absence of working papers demonstrating that an auditor checked into issues considered as “serious problems” supported an inference of the auditor’s “reckless indifference to the truth of the matters asserted in the financial statement.”⁶⁵ The accountant could have possibly proven the audit was conducted in accordance with professional standards by presenting any audit working papers supporting verification, but the working papers were not available.

Disposition of records pursuant to a good faith, consistent and reasonable records retention policy carried out in the ordinary course of business, in many cases, can serve as adequate justification for a failure to produce certain records during discovery. The policy, however, must **clearly state that records will not be destroyed when they are relevant or likely to become relevant to any current or potential litigation or investigation.** Controls must be built into a records retention policy sufficient to safeguard against even the unintended or accidental destruction of such records.⁶⁶

THE RETENTION POLICY SHOULD CLEARLY STATE THAT RECORDS WILL BE RETAINED, IF LIKELY TO BE RELEVANT IN ANY CURRENT OR POTENTIAL LITIGATION OR INVESTIGATION.

V. *DISCLOSURE, SUBPOENAS AND CLIENT CONFIDENTIALITY*

Professional standards of confidentiality apply to the disclosure of client confidences contained in working papers and client records.^{x 67} Confidential client information is oftentimes evidenced in tangible documents or electronic data formats. Concern about client confidentiality must therefore be addressed when disclosing records contained in an engagement file. Accountants may not disclose client confidences evidenced in records without client consent, unless a legal or regulatory exception applies (i.e. legal process compels production).⁶⁸

^x The confidentiality rules apply to *information* exchanged between the accountant and client.

- **AICPA Rule 301:** Disclosure of confidential client information is permitted only if (1) the client consents or (2) appropriate legal process compels the production.
- **OAR 801-030-0015(1)(b)** Disclosure of confidential client information is permitted only if (1) disclosure is required by court order or (2) disclosure is in response to subpoenas issued in state or federal agency proceedings.
- **ORS 673.385(2)** Disclosure of information is permitted (1) in court proceedings, in state or federal agency proceedings, in investigations or proceedings, in ethical investigations conducted by private professional organizations or in the course of peer reviews.

IF YOU ARE NOT LEGALLY COMPELLED TO DISCLOSE DOCUMENTS CONTAINING CLIENT CONFIDENCES, YOU MUST OBTAIN WRITTEN CLIENT CONSENT.

IF YOU ARE LEGALLY COMPELLED TO DISCLOSE CLIENT CONFIDENCES, INFORM THE CLIENT OF THE ANTICIPATED DISCLOSURE AND TRY TO OBTAIN CONSENT.

IF YOU ARE LEGALLY COMPELLED TO DISCLOSE DOCUMENTS AND CANNOT OBTAIN CLIENT CONSENT, YOU MUST STILL COMPLY WITH THE COMPELLED DISCLOSURE.

Accountants should be aware of the risks in not complying with the full scope of compelled disclosure of client information, and of the risks of disclosing more than what is being compelled. Because the legal issues involved in compelled disclosure of confidential client information and the technicalities of responding to a document request are complex, *any accountant faced with compelled disclosure should immediately consult a qualified attorney* who is familiar with litigation processes and the professional rules of conduct applicable to accountants.

BEFORE ATTEMPTING TO RESPOND TO ANY LEGALLY COMPELLED DISCLOSURE, SEEK THE ADVICE OF QUALIFIED LEGAL COUNSEL.

Disclosure of documents to the client is of less concern. In fact, client access to certain documents is mandated by regulation, and retention of client records after a client’s request for them is an “act discreditable” under AICPA Ethics Rule 501. In Oregon, an accountant may be required to furnish the following records to a client upon request:⁶⁹

- “A copy of a tax return, financial statement, report or other document issued by the licensee to or for such client or former client;”

- “Any accounting or other records belonging to or obtained from or on behalf of the client that the licensee removed from the client’s premises or received for the client’s account;” and
- “A copy of the licensee’s working papers, to the extent that the working papers include records that would ordinarily constitute part of the client’s records and are not otherwise available to the client.”^{xi}

VI. CONCLUSION

- YOUR FIRM SHOULD IN GOOD FAITH ADOPT A WRITTEN RECORD RETENTION POLICY THAT IS CONSISTENTLY APPLIED IN THE ORDINARY COURSE OF BUSINESS.
- RETURN ORIGINAL CLIENT RECORDS TO THE CLIENT AFTER THE CONCLUSION OF AN ENGAGEMENT, UNLESS A RETENTION AGREEMENT WITH A CLIENT STATES OTHERWISE. RETAIN A COPY OF A TRANSMITTAL LETTER DETAILING WHICH DOCUMENTS WERE RETURNED.
- ADOPTED RETENTION PERIODS SHOULD TAKE INTO ACCOUNT:
 - (1) STATUTES OF LIMITATION
 - (2) THE CLIENT’S RECORDS RETENTION POLICY
 - (3) RETENTION PERIODS SET BY LAW THAT ARE PARTICULAR TO AN AREA OF PRACTICE OR TYPE OF DOCUMENT
- STOP THE DESTRUCTION OF DOCUMENTS IN AN ENGAGEMENT FILE IF THOSE DOCUMENTS MAY BE RELEVANT TO ANY POTENTIAL OR CURRENT LITIGATION OR INVESTIGATION OF THE FIRM, THE ACCOUNTANT OR THE CLIENT.
- BEFORE DISCLOSING CONFIDENTIAL CLIENT INFORMATION RECORDED IN DOCUMENTS OR DATABASES, OBTAIN WRITTEN CLIENT CONSENT.
- BEFORE ATTEMPTING TO RESPOND TO A SUBPOENA OR OTHER COURT-ORDERED DISCLOSURE OF CLIENT INFORMATION, CONSULT A QUALIFIED ATTORNEY.

^{xi} An interpretation of this sub-section may be found in AICPA Ethics Rule 501 and includes adjusting, closing, combining, and consolidated journal entries, general and subsidiary ledgers and entries, and depreciation schedules, among other records prepared by the accountant.

ENDNOTES

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- ¹ Raspante, John F., “Record Retention Policies for Accounting Firms.”
- ² See RESTATEMENT SECOND OF AGENCY, §§ 378, 379 (1958).
- ³ *Raspante*, *supra* note 1.
- ⁴ *Id.*
- ⁵ See Appendix A for a sample retention policy.
- ⁶ www.accountantslaw.com
- ⁷ *Carlucci v. Piper Aircraft Corp.*, 102 FRD 472 (SD Fla 1984).
- ⁸ *Lewy v. Remington Arms Co., Inc.*, 836 F2d 1104 (8th Cir 1988).
- ⁹ See NEW YORK SOCIETY OF CPAS’ publication on “Document Retention Policies,” *available at* www.nyscpa.org/prof_library/lrm/whole_book.htm. See also www.accountantslaw.com.
- ¹⁰ *Lewy*, *supra* note 8 at 1112; *Gumbs v. Int’l Harvester, Inc.*, 718 F2d 88, 96 (3d Cir 1983).
- ¹¹ *In re: The Prudential Sales Practices Litigation*, 169 FRD 598 (DNJ 1997).
- ¹² See *Raspante*, *supra* note 1.
- ¹³ AICPA, MANAGEMENT OF AN ACCOUNTING PRACTICE, Chapter 209, “Filing and Records Retention Procedures.”
- ¹⁴ *Raspante*, *supra* note 1.
- ¹⁵ *Id.*
- ¹⁶ OAR 801-030-0015(2)(a)-(d).
- ¹⁷ OAR 801-030-0015(2)(a)(B).
- ¹⁸ AICPA ER § 501, Interpretation .02 501-1; OAR 801-030-0015(2)(a)(B).
- ¹⁹ OAR 801-030-0015(2)(d)(C).
- ²⁰ *Id.*
- ²¹ OAR 801-030-0015(2)(a)(A).
- ²² *Supra* note 2.
- ²³ Skupsky, Donald S., RECORDS RETENTION PROCEDURES, at 54.
- ²⁴ ORS 12.080.
- ²⁵ ORS 12.110.
- ²⁶ ORS 12.120.
- ²⁷ OAR 801-030-0015(2)(d)(C).
- ²⁸ *In re: The Prudential Sales*, *supra* note 11.
- ²⁹ OAR 801-030-0015(2)(d)(D).
- ³⁰ 107 S Rpt 205, at 2 (July 3, 2002) (providing, in part, “The statutory intent is that state regulatory authorities should make independent determinations of the proper standards for small- and medium-sized accounting firms that do not audit public companies; state authorities should not presume that the standards applied under the bill should apply to those companies under state regulatory schemes.”)
- ³¹ SAS No 96.
- ³² Whittington, Ray and Fischbach, Gretchen, “The New Audit Documentation Requirements,” *available at* www.aicpa.org/pubs/jofa/apr2002/whitting.htm, at 3.
- ³³ *Id.* at 5. See SAS No. 96.
- ³⁴ SAS No. 96. See NEW YORK SOCIETY OF CPAS, *supra* note 9.
- ³⁵ SAS No. 96. See AICPA, “SAS No. 96: AICPA Audit and Attest Standards, Statement on Auditing Standards, Audit Documentation, Summary,” *available at* www.aicpa.org/members/div/auditstd/riasai/sas96.htm.
- ³⁶ Public Company Accounting Reform And Investor Protection Act of 2002, 107 S Rpt 205 (July 3, 2002).
- ³⁷ *Id.* at 4.
- ³⁸ *Id.* at 8.
- ³⁹ *Id.* at 9.
- ⁴⁰ ORS 673.690(1).
- ⁴¹ ORS 314.410.
- ⁴² IRC § 6001.
- ⁴³ 26 CFR 1.6001-1(e).

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- ⁴⁴ IRS Pub 552 (1999), 1999 WL 1457484 (IRS 1999); 26 CFR 1.6001-1(e).
- ⁴⁵ IRC § 6501(a).
- ⁴⁶ IRC § 6501(c).
- ⁴⁷ IRC § 6501(e).
- ⁴⁸ *Supra* note 45.
- ⁴⁹ Fischer, Tom “Document Retention or Destruction: Spelling Out Louisiana’s Rules.”
- ⁵⁰ *Id.*
- ⁵¹ See ACCURATE DOCUMENT DESTRUCTION, INC. available at www accurateshredding.com/faq.asp. See also Fischer, *supra* note 50.
- ⁵² See ARMA, “A Message from our President” in FOR THE RECORD (May 2002).
- ⁵³ NEW YORK SOCIETY OF CPAS, *supra* note 9.
- ⁵⁴ 18 USC § 1503, § 1505, and § 1510.
- ⁵⁵ BLACK’S LAW DICTIONARY.
- ⁵⁶ See NEW YORK SOCIETY OF CPAS, *supra* note 9; see also www.accountantslaw.com.
- ⁵⁷ *Carlucci*, *supra* note 7.
- ⁵⁸ *Wm. T. Thompson v. General Nutrition Corp*, 593 F Supp 1443 (CD Cal 1984); *In re: The Prudential Sales*, *supra* note 11 (\$1million discovery sanction for improper destruction of relevant documents).
- ⁵⁹ *Booher v. Brown*, 173 Or 464 (1944).
- ⁶⁰ *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 NW2d 434 (Minn 1990); *Fox v. Country Mutual Insurance*, 169 Or App 54 (2000).
- ⁶¹ ORS 162.295 (Tampering with physical evidence.)
- ⁶² *In re: The Prudential Sales*, *supra* note 11.
- ⁶³ See, e.g., *Lewy*, *supra* note 8; *Carlucci*, *supra* note 7; “Responding to Electronic Discovery” at FindLaw.com.
- ⁶⁴ NEW YORK SOCIETY OF CPAS, *supra* note 9.
- ⁶⁵ *Frymire-Brinati v. KPMG Peat Marwick*, 2 F3d 183, 191-192 (7th Cir 1993).
- ⁶⁶ *Lewy*, *supra* note 8; see www.accountantslaw.com.
- ⁶⁷ See OAR 801-030-0015(1).
- ⁶⁸ OAR 801-030-0015(1).
- ⁶⁹ OAR 801-030-0015(2)(b)(B)(i)-(iii).

APPENDICES

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A. SAMPLE RETENTION POLICY AND SCHEDULE¹

POLICY

I. Retention of Client Records and Working Papers

1. At the conclusion of a client engagement, the engagement partner shall review all related working papers and client records to determine which records should be retained pursuant to this policy.
2. If the engagement file includes any *original* client records, they shall be returned to the client at the close of the engagement. A copy of a transmittal letter detailing which records were returned shall be retained.
3. After the engagement partner has completed review of all documents in the engagement file, documents subject to the retention schedule shall be placed in a secured storage area and retained according to the adopted retention periods stated in section II of this policy.
4. At the end of the scheduled retention period, the documents shall be destroyed in accordance with section III of this policy.

II. Retention Periods

1. Tax returns prepared for a client shall be retained for a period not less than 6 years from the date the tax return is due or filed, whichever is later.
2. Client records and working papers that evidence client revenue shall be retained for a period not less than 6 years from the date the tax return is due or filed, whichever is later.
3. Any other client records or working papers supporting the return shall be retained for a period not less than 4 years from the date of the preparation, advice, or assistance.
4. Before retaining any client records, the engagement partner shall discuss the firm's retention policy with the client and resolve any conflict that may exist between the firm's policy and the client's record retention procedures.

¹ The sample policy is geared toward small-to medium- sized accounting firms specializing in tax preparation.

III. Document Destruction

1. At the end of a retention period for documents, the partner responsible for the firm's relationship with the client shall conduct a review with both the firm and the client to ensure the documents could not reasonably be relevant to any threatened or pending litigation or investigation. If warranted, the responsible partner shall obtain from the client written confirmation that no such threat exists. The partner shall confirm in writing that a review was conducted, no threat exists, and the destruction process can continue.
2. If reason becomes apparent to retain documents, the destruction procedure for those documents shall be suspended. Destruction shall not resume until the firm has received written notice by the relevant investigatory body of the end of the investigation *or* until final disposition of the legal action or proceeding.
3. Once the responsible partner gives written confirmation that destruction is proper, the firm's document custodian shall deliver the documents to the firm's document destruction service provider and shall witness or obtain confirmation of the shredding of any documents considered confidential.

B. STATUTES OF LIMITATION

TYPE OF ACTION	YEARS
TORT ²	2
CONTRACT ³	6
PROFESSIONAL MALPRACTICE ⁴	2
DEFAMATION ⁵	1
GENERAL TAX ASSESSMENT ⁶	3
ASSESSMENT IF 25% UNDERSTATEMENT OF INCOME ON TAX RETURN (FEDERAL) ⁷	6
ASSESSMENT IF 25% UNDERSTATEMENT OF INCOME ON TAX RETURN (STATE) ⁸	5
CRIMINAL PROSECUTION RESULTING FROM TAX FILING ⁹	6
RECOVERY OF ERRONEOUS REFUND. ¹⁰	2

² ORS 12.080.

³ ORS 12.110.

⁴ ORS 12.110.

⁵ ORS 12.120

⁶§6501(a)

⁷§6501(e)

⁸ ORS 314.410

⁹§6531.

¹⁰IRC 6532(b)