

E K M A R K & E K M A R K, L.L.C.

ATTORNEYS AT LAW

How long do we have to keep this? This is a question that is often raised by directors and community managers. In short, the association is required to keep various records, for various periods of time, each of which is set forth below. Furthermore, state statute sets forth the records that an association must keep at its principal place of business and the time periods such documents must be kept.

Financial Records

An association needs to keep financial records for at least seven years in case it is ever audited by the IRS. Furthermore, an association must have available at its principal place of business financial statements for the past three years (pursuant to A.R.S. § 10-11601).

Lot Files

An association should never dispose of architectural approvals or denials for any lot within the subdivision. However, once a lot is transferred to a new owner, the association may dispose of the remainder of the old owner's lot file. The only exception to this general principle is if there is an existing violation that the association would like to pursue against the new owner.

Records Relating to Removal of Directors

The new legislation, which became effective August 12, 2005, sets forth specific procedures for removal of directors. This new legislation requires that all documentation relating to the removal of directors be kept for at least one year.

Minutes of All Board and Annual Meetings

A.R.S. § 10-11601(E)(4) requires that the minutes of all members' meetings and board meetings and records of all actions taken by members without a meeting be kept for three years. However, we would recommend that an association keep all minutes of all board meetings and all meetings of the members for the existence of the corporation. The minutes form the history and record of the association and do not take up that much space. The association would not necessarily need to keep the manager packet that accompanied the minutes after three years, but it should keep the minutes.

Written Communications to Members

A.R.S. § 10-11601(E)(5) requires that all written communications to members be kept for three years. Written communications would include such items as newsletters and notices of meetings.

State Statute

A.R.S. § 10-11601 sets forth additional requirements for record retention and specifically addresses the documents that the association must keep at its principal place of business and the time period such documents must be kept. For example, A.R.S. §10-11601(A) requires corporations to keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting and a record of all actions taken by a committee of the board of directors on behalf of the corporation.

A.R.S. § 10-11601 further provides that:

E. A corporation shall keep a copy of all of the following records at its principal office, at its known place of business or at the office of its statutory agent:

1. Its articles or restated articles of incorporation and all amendments to them currently in effect.
2. Its bylaws or restated bylaws and all amendments to them currently in effect.
3. Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members.
4. The minutes of all members' meetings and records of all actions taken by members without a meeting for the past three years.
5. All written communications to members generally within the past three years, including the financial statements furnished for the past three years under section 10-11620.
6. A list of the names and business addresses of its current directors and officers.
7. Its most recent annual report delivered to the commission under section 10-11622.
8. Any agreement among the members of the corporation pursuant to section 10-3732, such as a voting agreement.

In addition, the association should keep other records, as it deems appropriate, to preserve the history of significant events of the association, so that if challenged in the future, the association can prove their validity. For example, if the association were to amend the bylaws in the future, the association may wish to keep the records showing that the bylaws were properly amended to avoid future challenges.

In summary, as a matter of best practices, associations should first check the state statute to determine how long a document must be kept. If the answer cannot be found in the statute, the association should contact its accountant or attorney for advice. This is one of these situations where it is better for the association to be safe than sorry. Always double check, because after you shred it, it is too late.

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