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## RESEARCH MEMORANDUM

To:

From:

Date: ██████████

Re: Recent electronic record retention schedule for the District of Columbia

### QUESTION PRESENTED

#### **I. Provide the most recent record retention schedule for the District of Columbia**

##### **A. Introduction**

The federal as well as DC laws require all nonprofit organizations to maintain certain records. A record retention policy setting out the rules to retain the records – the records that should be retained permanently or for a given period - should help a nonprofit to maintain the schedule of the records they need to retain. The law, however, does not explicitly set forth a document retention schedule. The policy should provide a schedule, listing the documents and the duration to retain them. There is no such standard record retention policy. Its main objective should be to focus on specific categories of records and identify the right approach to each category. A record retention policy should make clear that once the record keeping time-period has elapsed, the record should be destroyed, and it should help protect against improper disposal or destruction of documents with an intent of obstructing an investigation.

##### **B. Record retention for nonprofits under DC Laws**

The Code of District of Columbia, § 29–413.01, the law dealing with record retention in

DC for nonprofits, require maintaining the following Part A records:

- The Bylaws and its Articles of Incorporation.
- All Minutes and accounting records for past three years.
- All communications to membership for past three years.
- The names and business addresses of officers and directors.
- Most recent biennial report.
- In case of a membership organization, an accurate membership list with names, addresses, and voting class of all its members.

Under § 29-413.01, corporate records including annual audits and financial statements, depreciation schedule, and IRS tax return forms are permanent. Under the Internal Revenue Code, tax-exempt organizations must make available certain tax forms for public inspection.

These include:

- a) Application for exempt status - Form 1023. All applications filed after July 14, 1987 must be permanently available for inspection by the public.
- b) Form 990-EZ and Form 990-T - Tax on unrelated business income. This Form must be made available for the 3-year period beginning with the due date of the return.
- c) Organizations with annual revenues of \$50,000 or less and those that file Form 990-N, the form is filed through IRS website and available there.<sup>1</sup>

The law does not impose any penalty for failure to do so, but the directors and members will have a right to inspect the records and can sue for an enforcement of that right if not complied with.

Under Part VI of the IRS Form 990, a nonprofit is required to state if it has a written document retention and destruction policy. The IRS defines such a policy to provide the record retention responsibilities of various divisions that include the staff, board members, volunteers,

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<sup>1</sup> <https://www.dcb.org/pro-bono/newsletters/summer-2017/record-retention.cfm>

and outsiders for documenting and maintaining the storage and destruction of the documents and records within the organization. A nonprofit should also state whether it keeps ‘contemporaneous documentation’ of its Board and committee meetings, i.e., the later of:

- the upcoming meeting of the Board or committee, or
- 60 days after the date of the meeting or written action.

Also, the nonprofit must have minutes only for those committees that have authority to act on behalf of the Board and this may not include advisory committees. Documentation includes all that is permitted by the state law including email, approved minutes, or such other writings that describe the action and who made it or when it was taken.<sup>2</sup>

### **C. Retention of Electronic Records; Originals**

The statute relates to retention of electronic records, Code of District of Columbia, § 28–4911, reads:

- (a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:
  - (1) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and
  - (2) Remains accessible for later reference.
- (b) A requirement to retain a record in accordance with subsection (a) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.
- (c) A person may satisfy subsection (a) of this section by using the services of another person if the requirements of that subsection are satisfied.
- (d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a) of this section.
- (e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a) of this section.
- (f) A record retained as an electronic record in accordance with subsection (a) of this section satisfies a law requiring a person to retain a record for evidentiary,

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<sup>2</sup> <https://www.dcbbar.org/pro-bono/newsletters/summer-2017/record-retention.cfm>



audit, or like purposes, unless a law enacted after [October 3, 2001] specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of the District of Columbia from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

Code of District of Columbia, § 28–4911.

#### **D. Contents of a Document Retention and Destruction Policy:**

To sum up, a document retention and destruction policy should include:

- A list of categories of documents with the length of time (i.e., permanently, or number of years to retain) the documents should be retained in the organization.
- A restriction provision to restrict employees, officers, and directors from destroying documents forecasting litigation; and
- A provision ensuring destruction of the documents and all copies after the expiration of the period for retention.

There is no law on a uniform duration of record retention for the documents other than what provided in § 29–413.01. Thus, the duration of the documents can vary with each nonprofit.

The following table is drawn from the details gathered from a couple of record retention policies of DC nonprofits, including a DC Certified Public Accountants website, Wikimedia DC, and several articles on nonprofit data retention for the categories provided.

### E. Data retention schedule

Name of the document	Duration suggested by DC CPA <sup>3</sup>	Duration Suggested by Wikimedia DC <sup>4</sup>	Duration suggested by Missionbox <sup>5</sup>
<ul style="list-style-type: none"> <li>Accident reports and claims (settled cases)</li> </ul>	6 years	Permanent	5 years
<ul style="list-style-type: none"> <li>Accounts receivable &amp; payable ledgers &amp; schedules</li> </ul>	6 years	7 years	7 years
<ul style="list-style-type: none"> <li>Audit reports, transfer evidence, cancelled checks, reconciliation</li> </ul> <ol style="list-style-type: none"> <li>Internal audit reports</li> <li>External audit reports</li> <li>Transfer evidence</li> <li>Cancelled checks</li> <li>Reconciliation</li> </ol>	3 years  Permanent  6 years 6 years	3 years  Permanent  Permanent Checks – 3 years 3 years	Permanent  Permanent  Check registers – 7 years 7 years
<ul style="list-style-type: none"> <li>Bank statements, deposit records, electronic funds</li> </ul> <ol style="list-style-type: none"> <li>Bank Statements</li> <li>Deposit records</li> <li>Electronic funds</li> </ol>	6 years	3 years 3 years	7 years 7 years 7 years
<ul style="list-style-type: none"> <li>Chart of accounts</li> </ul>	Permanent		
<ul style="list-style-type: none"> <li>Checks for important</li> </ul>		Permanent	

<sup>3</sup> <https://www.cpakfl.com/taxretention.php>

<sup>4</sup> [https://wikimediadc.org/wiki/Record\\_retention\\_policy](https://wikimediadc.org/wiki/Record_retention_policy)

<sup>5</sup> <https://www.missionbox.com/article/351/document-retention-for-us-nonprofits-a-simple-guide>

payments and purchases			
• Contracts, mortgages, notes and leases (expired)	6 years	3 years	7 years
• Contracts (still in effect)	Permanent	Permanent	---
• Copyright, trademark, patent registrations	Permanent	---	Permanent
<b>Correspondence</b>			
• General	3 years	---	3 years
• Legal and important matters	Permanent	---	---
• With customers and vendors	1 year		---
• Deeds, mortgages, bills of sale	Permanent	---	---
• Depreciation schedules	Permanent	Permanent	Permanent
• Donations		7 years	7 years
• Invoices (to customers, from vendors)	6 years	---	7 years
• Employment applications	3 years	3 years	3 years
• Expense Analyses & distribution schedules	6 years	---	7 years
• Financial Statements, year-end	Permanent	Permanent	Permanent
• Garnishments	6 years	---	7 years
• General ledgers, year-end trial balance, journals	Permanent	---	7 years

<ul style="list-style-type: none"> <li>• Grants</li> </ul>	---	---	7 years
<ul style="list-style-type: none"> <li>• Insurance policies</li> </ul>	Life of the policy	---	Permanent
<ul style="list-style-type: none"> <li>• Insurance records, accident reports, claims, etc.</li> </ul>	Permanent	Permanent	---
<ul style="list-style-type: none"> <li>• Inventory records</li> </ul>	6 years	7 years	---
<ul style="list-style-type: none"> <li>• Journals</li> </ul>	Permanent	---	7 years
<ul style="list-style-type: none"> <li>• Notes receivable ledgers and schedules</li> </ul>	6 years	---	---
<ul style="list-style-type: none"> <li>• Payroll records &amp; summaries</li> </ul>	6 years	7 years	Permanent
<ul style="list-style-type: none"> <li>• Personnel files, terminated employees</li> </ul>	3 years	---	4 years
<ul style="list-style-type: none"> <li>• Petty cash voucher</li> </ul>	3 years	---	3 years
<ul style="list-style-type: none"> <li>• Purchase orders</li> </ul>	1 year	---	---
<ul style="list-style-type: none"> <li>• Retirement and pension records</li> </ul>	Permanent	Permanent	Permanent
<ul style="list-style-type: none"> <li>• Tax returns and worksheets</li> </ul>	Permanent	Tax records - 7 years	Permanent
<ul style="list-style-type: none"> <li>• Timesheets, books, cards</li> </ul>			
<ol style="list-style-type: none"> <li>1. Timesheets and cards for hourly employees</li> </ol>	3 years	----	4 years after termination
<ol style="list-style-type: none"> <li>2. Time books</li> </ol>	6 years	----	----
<ul style="list-style-type: none"> <li>• Training Manuals</li> </ul>	---	----	---
<ul style="list-style-type: none"> <li>• Vouchers for payments to vendors, employees, etc.</li> </ul>	6 years	----	----
<ul style="list-style-type: none"> <li>• Withholding tax statements</li> </ul>	Tax records - Permanent	Tax records - Permanent	Tax records - Permanent



## **CONCLUSION**

The DC laws do not set out any explicit schedule or duration for retaining the records of nonprofits apart from the corporate records set out in § 29-413.01. So, the above schedule provides a comparison of the duration suggested by a DC CPA website, Wikimedia DC, and organizations involved with nonprofits across the United States.