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Other areas of practice include estate administration and disputes, property law disputes and employment law issues.

## **Spring Cleaning the Condo Corporation's Documents** By Sonja Hodis

As spring approaches and some of you may be eager to do some de-cluttering of your condo records to regain some much needed storage space, it is important to understand what documents your condo corporation must keep and for how long.

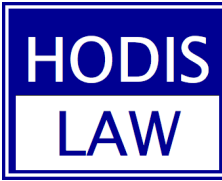
Any discussion about how long a condo corporation must keep records must first begin with an understanding of what records a condominium corporation is obligated to keep. Section 55 of the Condominium Act, 1998 as amended (the "Act") and s. 13.1 of Regulation 48/01 (the "Regulation")<sup>1</sup> sets out the list of documents a condominium corporation must keep. In addition to the list in sections 55 and 13.1, you must also check your Bylaws to determine if there are any additional records your corporation is obligated to keep.

My first inclination is to never get rid of any documents as you don't know when you will need them. I have had condo cases where we have had to go back 20+ years to find documents that were relevant to the case. Having these documents as part of the corporation's files makes these type of cases easier and more cost effective to handle. You avoid the necessity and increased costs of having to search for these records elsewhere or run the risk that you may not be able to find that crucial document. However, if you are not inclined to keep everything in case you need it, the Act and Regulation now set out minimum requirements for retention of corporation documents. These minimum requirements apply to original documents or redacted versions of documents. Redacted versions must be kept for the same period as the original document. Redacted documents are usually created when a request for copies of documents is made by an owner but the owner is not entitled to see the entire contents of the document or there is litigation. Below you will find a summary of the three general retention periods under the Act and Regulation.

### **Documents you can never get rid of and must keep forever**

- Minutes of board and owner's meetings
- Drawings and plans
- Turnover documents
- Performance audits
- Reserve fund studies and plans
- Declaration, Bylaws, Rules
- Record of owners, mortgagees and tenants (including lease agreements or summary of lease in prescribed form)

<sup>1</sup> Copies of the Act and Regulation can be found at <https://www.ontario.ca/laws/statute/98c19>



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**Documents you can never get rid of and must keep forever (con't)**

- Records relating to on going litigation, insurance claims or investigations
- Current warranties and insurance policies
- On going agreements corporation has entered into

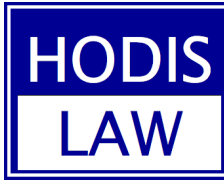
**90 days from date of meeting with some exceptions**

- Proxies
- Ballots/Recorded votes

**Documents you must keep for 7 years after the end of the last fiscal year to which they relate**

- Financial Records
- Information returns and notices of change filed with CAO
- Status certificates
- Director disclosure statements and training records
- Records relating to specific owners
- Employee records
- Expired agreements, insurance policies and warranties ( from date of expiry of agreement/policy/warranty)
- Records related to insurance claims and investigations and actual or contemplated litigation that have ended (from date of conclusion of litigation, claim or investigation)
- Reports and opinions from an engineer, architect or appraiser relating to the corporation's property
- Inspector reports
- Records relating to installation of electric vehicle charging systems
- Records relating to changes to common elements, assets or services by corporation or owner
- Records relating to right, title, interest, encumbrance or demand of any kind in relation to land affecting the corporation

While the above charts summarize the three basic retention periods for most records a corporation must keep it does not cover all records that must be kept by a corporation. If there is no specific time period mentioned for a record to be kept under s. 55 of the Act, 13.1 of the Regulation or your Bylaws, the default retention period is the period of time the Board determines is necessary for the corporation to perform its objects and duties or to exercise its powers. Section 17 of the Act sets out the objects and duties of the corporation which are to control, manage and administer the common elements and assets of the corporation on behalf of all the owners and to ensure compliance with the Act



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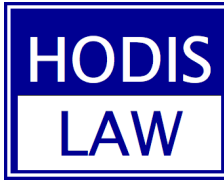
and the corporation's governing documents. In addition, if there is more than one time period a corporation must keep a record, the longest time period applies. Finally, the minimum requirements under the Act or Regulation do not absolve the condominium corporation from keeping records for longer time periods that may be required by other legislation.

There are several exceptions to the above time periods which will extend the minimum amount of time you will need to keep a record. If a request for records is made by an owner or property manager to obtain records or the corporation has received notice of actual or contemplated litigation in relation to a proxy or ballots, you must extend the time you are required to keep those records which will most likely be the latest date of when you are obligated to keep the record, the date in an agreement regarding the retention of the record or an order from a judge, arbitrator or the Tribunal with respect to the record. If litigation is commenced during the time you are required to keep the record, you are obligated to continue to keep the record until the litigation has ended. More details about these type of exceptions and the period of time you must keep the record can be found in section 13.1 of the Regulation. If any of these situations occur, it is best to speak to your legal counsel about the specific situation and records in question.

Now that you have a better understanding of the type of records and the length of time you need to keep them, the next issue that must be addressed is how you keep the records. The Act and the Regulation allows for keeping of records in electronic or paper formats. You do not need to keep all records in a paper format. Paper records must be kept either

- a) on the condominium property in a spot that the Board has determined to be appropriate for storage of records; or
- b) at another location that the Board determines
  - i. will allow the Board to carry out its obligations with respect to records, and
  - ii. is an appropriate location for storing records, and
  - iii. is the condominium manager's place of business in Ontario or any place reasonably close to the condominium property

In terms of electronic records, they must be kept in a format that will allow them to be reproduced in an accurate and intelligible form within a reasonable time. The standard format for most electronic documents is a .pdf file. The electronic documents must be protected against unauthorized access (ie. password protected and encrypted) and potential loss, damage or inaccessibility. They must be automatically backed-up and you must be able to recover backed up files.



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Whether you are keeping your records in electronic or paper format you will want to make sure they are protected from fire, loss, theft, or acts of nature. It is a good practice to have an electronic version of all your paper documents as a back up and to have at least one if not two back ups of your electronic documents located in different secure locations. This way, if fire or Mother Nature damages or destroys one location, a copy of the corporation's records are safely stored in another location. While transferring your documents to an electronic format will free up the space the paper records were consuming, not all documents should be transferred to an exclusively digital format. For example, paper documents with original signatures such as contracts or agreements would best be stored in a fire and waterproof safe in addition to an electronic format.

Finally, when disposing of records, corporations must be mindful of how they dispose of records. Never just place documents in a recycling bin or garbage bag. You don't want to see your documents flying across the parking lot as many records contain information that is not meant to be shared with the public including other owners or tenants. In addition a corporation and/or property manager have a legal obligation to protect the personal information they collect and which may be contained in the records you dispose of. It is prudent that you make sure that if you are getting rid of records you properly dispose of them. At a minimum you will want to shred documents with a cross cut shredder as opposed to a strip cut shredder. The smaller the shredded pieces the harder it is to put them back together. Most personal shredders will not do a secure shred. The corporation may want to invest in a commercial shredder or look to hiring a company that can securely shred or otherwise dispose of your documents.



Sonja Hodis is a litigation lawyer based in Barrie that practices condominium law in Ontario. She advises condominium boards and owners on their rights and responsibilities under the *Condominium Act, 1998* and other legislation that affects condominiums such as the Human Rights Code. She represents her clients at all levels of court, various Tribunals and in mediation/arbitration proceedings. Sonja has also gained recognition for creativity and tenacity in ground breaking human right caselaw in the condominium industry. Sonja can be reached at (705) 737-4403, [sonja@hodislaw.com](mailto:sonja@hodislaw.com) or you can visit her website at [www.hodislaw.com](http://www.hodislaw.com) or watch her videos at [www.condoinmotion.com](http://www.condoinmotion.com).

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