Record Retention: Critical Documents

BY BARBARA BALLINGER

Compiling a file for each transaction is a surefire way to manage your liability risk. Here's what to include:

12 Documents Every Listing Agent's Transaction File Should Have

1. Listing agreement, including comparable market analysis
2. Agency disclosure forms (including any dual agency disclosures), signed or acknowledged, if applicable
3. Property condition disclosure form, if applicable
4. Marketing materials, including newspaper ads and printouts of online listings
5. Relocation or referral information, if applicable
6. Correspondence and phone logs with buyers, sellers, attorneys, other agents, and other parties involved in the transaction
7. Inspection reports, if available and applicable
8. Lead paint or other hazardous materials disclosure, if applicable
9. Copy of purchase contract and addenda
10. Copies of invoices for completed repair work required for sale, if available
11. Settlement statement (HUD-1 Form), if available
12. Escrow account records relating to the transaction

11 Documents Every Buyers' Agent's Transaction File Should Have

1. Buyer agency agreement, if applicable
2. Records, notes and reports regarding properties shown
3. Agency disclosure forms (including any dual agency disclosures), signed or acknowledged, if applicable
4. Property condition disclosure form, if applicable
5. Relocation or referral information, if applicable
6. Correspondence and phone logs with buyers, sellers, attorneys, other agents, and other parties involved in the transaction
7. Inspection reports and repair estimates obtained, if available and applicable
8. Lead paint or other hazardous materials disclosure, if applicable
9. Copy of purchase contract and addenda, including records, notes and drafts of contracts, as well as those from any contract offers not accepted, and also including comparable sales data provided in connection with contract negotiations
10. Copies of invoices for completed repair work required for sale, if available
11. Settlement statement (HUD-1 Form), if available

Record Retention Schedule

Below is list of general documents that firms may maintain in their files. Next to each entry are some suggested legal time requirements for which the association should maintain these documents, from the National Association of REALTORS®. These time requirements are conservative estimates, and do not prevent any organization from extending these time periods beyond these minimums. These requirements vary by state, and so you will need to consult with your attorney when creating your firm policy.

Accounting Records

Accounts payable (seven years)
Accounts receivable(seven years)
Annual financial statements (permanent)
Bank statements (seven years)
Bank reconciliations (seven years)
Canceled checks- routine matters (seven years)
Canceled checks- special (loan repayment, etc.) (permanent)
Correspondence: routine (four years)
Deeds and closing papers (permanent)
Deposit slips (four years)
Electronic payment records (seven years)
Employee expense reports (seven years)
Fixed-asset acquisition invoices (after disposal) (seven years)
Freight bills (seven years)
General ledgers (permanent)
Income tax returns (permanent)
Inventory count & costing sheets (seven years)
Insurance policies (after expiration) (four years)
Investments (after disposal) (seven years)
Mortgages, loans & leases (paid) (seven years)
Payroll journals & ledgers (permanent)
Purchase orders (except accounts payable copy) (one year)
Purchase invoices & orders (seven years)
Receiving sheets (two years)
Sales commission reports (five years)
Sales records (seven years)
Sales tax returns & exemption support (five years)
Subsidiary ledgers (seven years)
Tax returns (federal & state) (if applicable) (permanent)
Trial balances (permanent)

Corporate Records, if applicable

Articles of Incorporation and amendments (permanent)
Bylaws and amendments (permanent)
Corporate filings (permanent)
Corporate Minute Book (permanent)

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Employment Records

Documents relating to job recruitment: advertising, job orders submitted to employment agencies, interviewing, testing, hiring, training, demotions, promotions, layoffs, discharge, and other personnel decisions (one year)
Employee benefit plan documents (duration of plan)
FMLA leave records including: all FMLA information and notices distributed to these employees and records of any FMLA disputes.
Garnishments / wage assignments (three years)
Immigration I-9 forms (duration of employment plus one year, minimum of three years)
Medical records relating to the exposure of the employee to any toxic or hazardous substances. (duration of employment plus 30 years).
Payroll records showing name address, date of birth, occupation, rate of pay, and weekly compensation (three years)
Personnel Records (ten years after employment ends)
Record of all occupational injuries, including those under state workers compensation law and any ERISA awards (five years for ERISA; state law requirements will vary)

Legal Documents

Contracts (ten years after expiration)
License Applications (one year after expiration)
Licenses (one year after expiration)
Trademarks, Patents & Copyrights (permanent)
Warranties & Guaranties (two years beyond terms of the warranty)
Correspondence: legal (permanent)

Firm Property Records

Deeds of Title (permanent)
Leases (two years after expiration)
Depreciation schedules (permanent)
Property Damage (seven years)
Property Tax (permanent)
Appraisals (permanent)
Blueprints / Plans (permanent)
Warranties & Guaranties (two years beyond terms of the warranty)

Client / Transaction Records

Property Information File & Sellers Description, Lead Paint (7 years)
Mandatory Consumer-Licensee Relationship Disclosure (3 years)
Contracts & Closing Documents (7 years)
Seller Client File: (7 years)
Buyer Client File: (7 years)

Record Retention: A Case Study

FOR BROKERS: Managing Risk, BY ROBERT FREEDMAN

Suited for battle:

For even the most carefully managed real estate brokerage, the threat of lawsuits is a fact of life. At a minimum, the key to disaster-proofing your brokerage is your errors and omission insurance, say real estate attorneys. That insurance kicks in when you're sued and gives you the resources to defend yourself.

But setting up a thoughtful risk-management plan is equally important, because it reduces the likelihood of your being sued in the first place and gives you a basis for negotiating lower E&O premiums, says Robert Bass, a broker defense lawyer in Phoenix.

At its most basic level, risk management means instituting a sound record-keeping policy.

For Duane Fouts, broker-owner of Dan Schwartz Realty Inc. in Phoenix, record keeping is proving to be key to mold litigation he's been fighting for two years.

To the credit of one of his sales associates, who followed company policy and kept a copy of an inspection report giving a clean bill of health to the house that's the subject of the suit, Fouts can document that his associate was unaware of any mold problem. The buyer, who filed the lawsuit, claims the seller and the associate failed to disclose mold spreading under the kitchen sink.

"There's really no way a broker or a manager could have avoided a lawsuit like this," says Fouts, "but there's no doubt we're well prepared for it because our associate did his job."

Adequate documentation is clearly just as crucial in lawsuits you initiate. Thanks to meticulous record retention, David Bronson, broker-owner of Bronson America, REALTORS®, in Binghamton, N.Y., prevailed in a lawsuit he filed two years ago to secure his commission on a sale he worked on in Ithaca, N.Y.

Per an agreement he had entered into with the seller, a nonprofit organization, he procured a ready, willing, and able buyer. Then the nonprofit decided not to sell the property. But the nonprofit turned around and sold it a short while later without him. When Bronson filed a lawsuit to claim his commission, the seller argued that the deal Bronson put together was for less than the asking price. But Bronson was able to counter this by producing a handwritten note from the nonprofit organization's treasurer authorizing him to reduce the price of the property to the appraised value, which was the price his buyer had agreed to pay.

"The key document was the price reduction authorization," says Bronson, who received financial help on the case from the New York State Association of REALTORS®. "The treasurer gave a sworn deposition that the organization wanted to sell the property at the appraised value," and the note supported that contention, he says.