



NOVA SCOTIA  
BARRISTERS' SOCIETY

## Legal Services Support – File Retention/Destruction Policy Template

*In development*

The LSS [Guide to Succession Planning](#) is recommended to help you make this policy.

**Name of practice** \_\_\_\_\_

(“The Firm,” “our,” “us,” and “we,” even if sole practice)

**Date** \_\_\_\_\_

Footnotes, and italicized words, apart from statute names, do not form part of this policy.

### Purposes

1. To provide for retention of closed files for a reasonable time in case we need to respond to a possible liability claim or a professional misconduct complaint; and
2. To provide for the timely destruction of records to protect privacy, reduce costs, reduce the burden of paper files, and facilitate succession.

### Scope

Applies to all client files, paper and electronic, now or hereafter in our possession.

### Recital

We considered the twin purposes of this policy, the applicable law and our professional obligations to our clients and colleagues including (*please review and check the below*):

- Obligation to follow all privacy laws including *PIPEDA*, including an obligation not to retain personal information longer than necessary;
- The *Limitation of Actions Act*;
- Obligation to cooperate with our insurer to defend any professional liability claim<sup>1</sup>;

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<sup>1</sup> Claims experience is very low for files that have been closed for 15 years. If you destroy a file pursuant to a *bona fide* retention/destruction policy, LIANS still provides coverage. See our [Guide to Succession Planning](#).

- Limitations relevant to our practice which might apply to some files (e.g., children, wills) and whether they are relevant to the issue of retention/destruction;
- Obligation to have a succession plan<sup>2</sup>;
- Obligation to produce the file if a complaint is made;
- Moral obligation to not leave behind a mess for others to pay for/clean up.

### General Retention Period

Having regard to our obligations, our professional judgement, and what is professionally acceptable,<sup>3</sup> we will retain, with **only** the Exceptions noted below, all client files for: (*pick one*)

- 15 years
- or**
- \_\_\_\_\_ years.

### Exceptions

**Foundation Documents** (only for LRA-vintage Real Estate Transactions) (see definition below) *Must be kept according to the Regulation under the Legal Profession Act.*<sup>4</sup> *Foundation documents must be accepted by another lawyer when you change category; consider keeping them in electronic form.*

Definition from *Legal Profession Act*:

(ma) "foundation documents" means information on which a practicing lawyer relied in support of the exercise of professional judgment in rendering an opinion of title or certificate of legal effect, and includes an abstract of title, searches, documents, notes, survey fabric, or other title information, whether prepared by the lawyer or others and all information required to be kept pursuant to the Land Registration Administration Regulations.

Policy (*choose one*):

- We will retain foundation documents indefinitely.
- We do not practice real estate law, have no foundation documents, and will not accept responsibility for another lawyer's foundation documents without reviewing this policy.
- Other: \_\_\_\_\_

<sup>2</sup> Over-retention of files is a known obstacle to succession planning.

<sup>3</sup> This involves an objective view of your professional obligations, including to your insurer.

<sup>4</sup> Regulation 8.2.1 to 8.2.5

**Minors**

*Please consult the Limitation of Actions Act*

Policy (*choose one*):

- When the client reaches the age of 34 years;
- Other: \_\_\_\_\_

**Persons Under a Disability**

*Please consult the Limitation of Actions Act before establishing a destruction date.*

Policy:

- At the time of closing the file, a destruction date will be established having regard to the ultimate limitation period as it applies to the particular client.

**Original Wills, POAs, and instructions and information on capacity** *Please research the issue of retention of originals and of the files, which include capacity evidence. Consider how long these might need to be kept. We recommend you do not keep original wills. Store the instructions/capacity information separately from other files so they don't get destroyed until you know they can be and consider scanning them to make long term storage feasible.*

Policy:

- Please describe your policy

**Criminal law files ending in acquittal**

Choose one:

- 5 years after closing
- \_\_\_ years after closing

**Minute Books** (applies to minute books & seals which, after reasonable efforts to find the client including online, cannot be returned. *Choose one:*

- Once a company is struck off, scan evidence of legal and beneficial ownership (eg shares, registers) and any minutes, then shred book contents and destroy or recycle seal. Destroy scanned documents \_\_\_ years after strike-off.
- Other: (*spell out*)

**Other Exceptions must be identified** *Do not make exceptions for particular clients or files. Exceptions can be for broad groups of files, like those dealing with a particular area of law.*

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Q: *Why didn't you draft an exception for property files, including pre-LRA title searches?*

A: *The rationale for retaining/destroying them is same as for other files. (Privacy law requirements, for how long might you reasonably be subject to a liability claim or complaint, compliance with client ID regulations, and the facts that very few claims are made after 15 yrs from closing the file and you will still be covered by LIANS if you destroy a file pursuant to a bona fide policy.<sup>5</sup>) Pre-LRA property files are simply old files. While it used to be common to keep property files for a long time, the profession and laws have changed.*

### **Rules for Destruction:**

Following these rules and a proper policy can prevent an adverse inference<sup>6</sup> being drawn against you. They are recommended by LIANS and NSBS-LSS.

1. Do not destroy any file or part thereof where you know there will be a claim or possible claim.
2. Do not destroy a file any earlier than this Policy provides.
3. Files are destroyed within a reasonable time once their retention period is over.
4. Don't make new exceptions (e.g. for clients, files or parts of files) when it comes time to destroy.
5. Destroy the entire file contents (assuming client property has been returned). Do not keep bits and pieces. (You can save research memos in a library, electronic or paper.)
6. Keep a record of the destruction date. If the file is destroyed pursuant to one of the listed Exceptions to your general retention period (e.g. 15 years), note which Exception.

Signed and dated on behalf of The Firm:

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**Be sure your lawyers and staff are all trained on applying this policy.**

**The rest of this document is not part of the policy**

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<sup>5</sup> See LSS [Guide to Succession Planning](#) for a more complete explanation.

<sup>6</sup> If you destroy a file outside these rules and your *bona fide* policy, you could open yourself up to a possible allegation you did so in order to hide something

### Store for destruction: checklist with tips for closing files:

- The easiest, cheapest and least stressful practice is to cull your file when you close it. Touch once and reduce your *PIPEDA* exposure.
  - Return original materials and client property to your client.
  - Remove duplicates, notepads and research.
  - Determine if there are documents that can be reproduced from an authority if ever you need them in future. Return to client or shred. These are often rich in sensitive personal information so don't keep them unnecessarily (eg hospital records, Crown disclosure, corporate filings, tax returns).
- Have the responsible lawyer set a destruction date pursuant to the above Policy and mark it on the file. The destruction date can be as simple as a year. The key is to set it up to destroy in efficient chunks (ie you are setting this up so all your files marked 2034 will easily be destroyed in 2034).
- Store your files (paper and electronic) grouped by destruction date. Plan to destroy paper by the box, shelf etc. If you are closing two files that, by your Policy, have two different destruction dates, they belong in different boxes, each labelled with a destruction date.
- Back-up your files by destruction date.
- Keep foundation documents separately- they are a good place to start storing electronically. Most start off as e-documents anyway and it's easier to meet your obligations at the end of practice. Get your searcher to scan, not fax!
- Keep will and POA files<sup>7</sup> separately (i.e. in their own boxes or, better, scanned).

Shredding will now be easier and you can breathe more easily about your compliance with privacy law.

### Miscellaneous tips:

You cannot exit practice without providing for your closed files, wills, and foundation documents, so plan ahead.

Your potential successor may be put off by a volume of paper overdue for destruction.

You pay through your dues for the rising expense of custodianships and receiverships. A big chunk of that cost relates to paper files. We all have a role and an interest in reducing paper.

Consider switching to electronic record keeping, becoming common

If you retain electronic files, you still need a retention/destruction policy, but it's easier to leave practice because your closed files and foundation documents won't be a roadblock.

Scanning is ultimately a business decision that also helps with your professional obligations.

Questions? Contact the Legal Service Support team: 902-422-1491 or [LSS@nsbs.org](mailto:LSS@nsbs.org)

See also LSS companion guides: PREPS: a Paper Reduction Program and Guide to Succession Planning.

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<sup>7</sup> But the original will is best given to the client. If not, give adequate thought to storing it.

### Template annual privacy procedure: Destruction Day

1. Adjust depending on how you store your files.
2. Book time for lawyers and staff once a year to do this. Put it in peoples' calendars.
3. For Destruction Day, if possible, run a list of all files you possess for which the retention period has now elapsed.
4. Do your best, and feel free to call Legal Services Support for guidance.
5. For files you encounter which were not prepared with the above checklist:
  - a. as you proceed through your paper and electronic files, double-check that they do not contain will or POA instructions or foundation documents;
  - b. if your retention/destruction policy provides for a longer retention period than this Destruction Day, mark the destruction date on the file and store it in a way that your attention will be drawn to it at the right time (e.g. a box or electronic location labelled "2034");
6. If you encounter a file where you have information that a possible claimant in the event of a claim suffered or suffers from a disability as defined in the *Limitation of Actions Act*, separate the file and note why.
7. If you encounter a file for which you know of a potential or actual claim or complaint, do not destroy it. Report any potential claim to LIANS if you haven't already.
8. For paper files, shred all of the contents and note the date of destruction (on a list of files, or even on the file folder).
9. Using your list (or folders)
  - a. Identify and destroy any electronic file
  - b. Identify and destroy any electronic back-up(s)
  - c. check your desktop for any lingering information (e.g. files in Word, PDF, Excel...) and destroy same.
10. Emails – either:
  - a. Go through your emails that are not in the file and eliminate them matter-by-matter, or
  - b. Delete all emails older than a certain age (perhaps your general retention period).
11. Back-ups including system back-ups: now is a good time to destroy unnecessary back-ups. Keep only what you need.