

Community Association Document Retention and Production Policy and Sample Resolution



(Note on citations to Oklahoma law: All citations to Oklahoma law within this article are provided within parentheses so that you may enter the citation into the dialogue box in the upper left hand corner of the Oklahoma State Courts Network at www.oscn.net, click "GO" and your browser will be taken to the full language of the statute.)

Depending on the nature of the association, Oklahoma law may require the association to maintain certain documents, books, and records. Often, the governing documents to the association require certain recordkeeping in addition to legal requirements.

The Oklahoma law applicable to condominium association requires certain formalities in recordkeeping for the association. Section 521 to the Oklahoma Unit Ownership Estate Act (*60 O.S. 521*) provides:

The administrator, or the board of administration, or other form of administration specified in the bylaws, shall keep a book with a detailed account, in chronological order, of the receipts and expenditures affecting the common elements specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. Both said book and the vouchers accrediting the entries made thereupon shall be available for examination by all the unit owners at convenient hours on working days that shall be set and announced for general knowledge.

The Oklahoma law pertaining to homeowner associations contains no language dealing with record keeping or retention. (*60 O.S. 852*) However, if an association is incorporated, the Oklahoma Corporation Code does require certain formalities in regards to corporate association recordkeeping and production of those documents when a member makes a records request. (*18 O.S. 1065*)

The law provides:

INSPECTION OF BOOKS AND RECORDS

A. As used in this section:

1. "Shareholder" means: a. a shareholder of record in a stock corporation, or a person who is the beneficial owner of shares of stock held either in a voting trust or by a nominee on behalf of a person, and b. a member of a nonstock corporation as reflected on the records of the nonstock corporation;
2. "List of shareholders" includes a list of members in a nonstock corporation;
3. "Under oath" includes statements the declarant affirms to be true under penalty of perjury under the laws of the United States or any state; and

B. Any shareholder, in person or by attorney or other agent, upon written demand under oath stating the purpose thereof, shall have the right during the usual hours for business to inspect for any proper purpose, and to make copies and extracts from:

1. The corporation's stock ledger, a list of shareholders, and its other books and records;

In every instance where the shareholder is other than a records holder of stock in a stock corporation or a member of a nonstock corporation, the demand under oath shall state the person's status as a shareholder or member, be accompanied by documentary evidence of beneficial ownership of the stock or beneficial membership, and state that the documentary evidence is a true and correct copy of what it purports to be. A proper purpose shall mean a purpose reasonably related to a person's interest as a shareholder or member. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or other writing which authorizes the attorney or other agent to so act on behalf of the shareholder. The demand under oath shall be directed to the corporation at its registered office in this state or at its principal place of business.

C. 1. If the corporation or an officer or agent thereof refuses to permit an inspection sought by a shareholder or attorney or other agent acting for the shareholder pursuant to the provisions of subsection B of this section or does not reply to the demand within five (5) business days after the demand has been made, the shareholder may apply to the district court for an order to compel an inspection. The court may summarily order the corporation to permit the shareholder to inspect the corporation's stock ledger, an existing list of shareholders, and its other books and records, and to make copies or extracts therefrom; or the court may order the corporation to furnish to the shareholder a list of its shareholders as of a specific date on condition that the shareholder first pay to the corporation the reasonable cost of obtaining and furnishing the list and on other conditions as the court deems appropriate.

2. Where the shareholder seeks to inspect the corporation's books and records, other than its stock ledger or list of shareholders, the shareholder shall first establish that:

- a. the shareholder is a shareholder,
- b. the shareholder has complied with the provisions of this section respecting the form and manner of making demand for inspection of the documents, and
- c. the inspection the shareholder seeks is for a proper purpose.

3. Where the shareholder seeks to inspect the corporation's stock ledger or list of shareholders and has complied with the provisions of this section respecting the form and manner of making demand for inspection of the documents, the burden of proof shall be upon the corporation to establish that the inspection the shareholder seeks is for an improper purpose. The court may, in its discretion, prescribe any limitations or conditions upon the inspection, or award other or further relief as the court may deem just and proper. The court may order books, documents, and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within this state and kept in this state upon such terms and conditions as the order may prescribe.

D. Any director, including a member of the governing body of a nonstock corporation, shall have the right to examine the corporation's stock ledger, a list of its shareholders, and its other books and records for a purpose reasonably related to his or her position as a director. The district court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the list of shareholders and to make copies or extracts therefrom. The court, in its discretion, may prescribe any limitations or conditions with reference to the inspection, or award other or further relief as the court may deem just and proper. The burden of proof shall be upon the corporation to establish that the inspection the director seeks is for an improper purpose.

From a recordkeeping standpoint, the statute assumes each corporation will retain records of its members. For nonprofit associations, these would be the owner-members. The statute does not outline the specific information the association would retain about each

member, but presumably as association would retain the names and addresses of its members, and perhaps other contact information. Some governing documents require owners to furnish proof of ownership to the association, such as a filed deed, before the association must recognize such person as a member of the association.

Beyond keeping a member list, the statute mentions only the “other books and records” of the corporation. Thus, subject to the more detailed provisions of the condominium act (referenced above), an association would be free to develop a recordkeeping practice commensurate with good business practice and the needs of its particular community.

Inspection of Records by Association Members

If the association is incorporated, 18 O.S. §1065 provides an outline of how the member may obtain certain books and records of the association. The governing documents themselves might also provide an inspection right much larger than that afforded by statute. Because Section 1065 is rather self-explanatory, I will not detail the correct procedure for making a 1065 request.

However, one aspect of making a 1065 request does often cause some controversy, and that is the “proper purpose” requirement. For example, a contentious member of a homeowners association requests the member list because she wants to send a letter to all the owners outlining her arguments against re-electing the present directors. Improper purpose? Other than the “reasonably related” test, the statute does nothing to answer what would represent a proper or improper purpose.

In general principle, a “fishing expedition” or a request to simply harass an association would not constitute a proper purpose. However, a request for a member list to lobby for the removal of a board member or seek support for a rival candidate should be considered a proper purpose. One should note that modern Oklahoma courts have not determined the scope of “proper purpose” within a community association setting. Thus, an association may need to look at early court decisions or even other jurisdictions for guidance on the facts of a particular records request.

Sample Document Retention and Records Request Resolution

COMMUNITY ASSOCIATION, INC. RESOLUTION #01-2005



RECORDS RETENTION & REQUEST POLICY

WHEREAS, the Association maintains books and records in accordance with customary business practice;

WHEREAS, the Members of the Association may seek to review such books and records;

AND TO establish an orderly and systematic process for responding to Member records requests,

IT IS THEREFORE RESOLVED THAT the Association will retain certain books and records and will respond to Member records requests as follows:

- 1. Records Retained by the Association.** In the normal course of business, the Association will retain certain books and records in order to operate as a professional and legitimate Oklahoma corporation. The Association will permanently maintain in a bound volume each of the annual minutes, board meeting minutes, policies, and resolutions of the corporation (the Minute Book). Any minutes of any executive session of the board or any documents produced for the purposes of litigation or provided by legal counsel shall be permanently maintained in a particularly identifiable volume separate from the Minute Book (the Confidential Records Book). The Association will maintain certain other documents and records in the nature of financial records, architectural committee documents, individual owner/Lot files, and the like pursuant to the needs of the Association. Such documents may be maintained in a manner suitable to the Board.
- 2. Records requests by Members.** Upon proper request, the Association may make hardcopies of the following available to Members in good standing: a complete copy of each governing document, a current budget, a profit and loss statement for the current year, a balance sheet for the current year, and minutes for the current year board meetings and annual meeting. Further, the Association may make certain other records available for inspection to a Member making a proper request.
- 3. Processing of requests for records.** To make a proper request, a Member must use the form of record request or its substantial substitute provided by the Association. If a Member has not previously done so, the Member shall submit with the request proof of membership within the Association. Such request shall designate for each document and record requested the purpose for which the Member requests the document or record – general or blanket stated purposes will not be accepted. The Association will accept written requests for records during business hours and business days. The Association will make a verbal or written response to the Member requesting such records within five business days.
- 4. Payment of Assessments and Costs.** Any Member owing an amount of money or having failed to discharge any obligation to the Association shall remit any outstanding balance or shall perform any obligation owed to the Association prior to

obtaining any Association records. Further, the Association may charge no more than \$.25 per page for copying expenses, except for governing documents, which the Association may charge actual costs as required for copies of publicly filed documents.

This Resolution is adopted at a meeting attended by the following members of the Board: _____

_____ who voted in the following regard:

_____ this _____ day of _____, 20__.

Director

Secretary