

Land Transactional Recordkeeping – For Keeps!

Heart of the Lakes Summit

November 10, 2009 ~ 3:00pm-4:15pm
Room 205

OUTLINE

- ❖ Introduction
- ❖ Standards and Practices
- ❖ Why it is important to keep Records
- ❖ What are Records
- ❖ Recordkeeping Policy
 - What,
 - When,
 - How,
 - Where,
 - Why
- ❖ What and When
 - Business Records
 - Records Destruction
 - Essential Acquisition Records
 - Essential Stewardship Records
 - Form 990 reporting requirements
- ❖ How and Where
 - Paper Filing System
 - Electronic Recordkeeping Systems
- ❖ Why
- ❖ Question and Answer

❖ Introduction

- Additional sources of information
 - The Learning Center
 - irs.gov – See IRS Publication 4221-PC
 - Standards and Practices Curriculum Guides: *Nonprofit Law and Recordkeeping, Volume II, Acquiring Land and Conservation Easements*, and *Managing Conservation Easements in Perpetuity*
 - Legal and financial counsel

❖ Standards and Practices

- Standard 2D
 - Compliance with Laws: Records Policy
- Standard 6B
 - Financial and Asset Management: Financial Records
- Standard 9G
 - Ensuring Sound Transactions: Recordkeeping
- And Standards to do with Land Transactions (8, 9, 10, 11, and 12)

❖ “Everything stems from the WHY.”

- ~ Melissa Hansen, Little Traverse Conservancy

❖ Why Keep Records

- Ethical / Moral
- Practical
- Historic
- Legal
- Planning
- Communications
- Public Relations

❖ What are Records?

- Definition: An account, as of information or facts, set down, especially in writing, as a means of preserving knowledge.

❖ What are Records?

- Typical types of records a land trust would have:
 - Organizational / Legal Records
 - Financial records
 - Transactional Records
 - Stewardship Records
 - Publications
 - Correspondence (including emails)
 - Agreements / promises to donors
 - Photos
 - Others?

❖ **Recordkeeping Policy**

- Develop Policy and Procedures for:
 - What records to keep
 - When - how long to keep records (System for disposal of records)
 - Where to keep records
 - How to keep records
 - ◆ Who will keep records, who has access
 - Why

❖ **Recordkeeping Policy**

- See Handout on Creating a Recordkeeping Policy

❖ **Recordkeeping Policy**

- *Philosophy* of Recordkeeping (“why”)
 - Risk Management
 - Legal Requirements
 - Ability of the organization
 - Historic

❖ **Recordkeeping Policy: What and When**

- *What to keep and for how long*
 - Research and get legal/financial advice on which records to keep and for how long.
 - Organizational and Financial requirements vs. Land Transactions

❖ **Recordkeeping Policy: What and When**

- Records to prepare for legal challenges. . . or not.

❖ **Recordkeeping Policy: What and When**

- Records “kept in the course of regularly conducted business”
 - *Business records exception to the hearsay rule*

❖ **Recordkeeping Policy: What and When**

- Develop a plan for destroying old records
 - (Sarbanes Oxley)
 - (IRS – records retention policy)

❖ **Recordkeeping Policy: What**

- What do you consider ESSENTIAL records? What will go in your permanent file with a copy in your working file?
 - Land Transactions?
 - Stewardship?
 - What do you keep? What do you copy?

Recordkeeping Policy: What

➤ **Essential Acquisition Records: DISCUSSION**

- Recorded Deed or Conservation Easement
- Copies of draft conservation easements
- Title Policy
- Title Commitment
- Survey
- Photos
- Photos not needed for Baseline
- Contracts
- Handwritten thank you from donor
- Newspaper articles
- Lists of donors to the project
- Illegible notes from staff/volunteers
- Legible notes from staff/volunteers
- Emails
- Old faxes
- Environmental reports
- Tax Records
- Board approval records
- Documentation of Public Benefit
- Documentation of Conservation Values
- Biological information
- Appraisals
- Form 8283
- Copy of Contemporaneous Acknowledgement Letter
- Correspondence with landowner
- Correspondence with attorneys, experts, appraisers, etc.
- Site Inspection forms

❖ **Essential Stewardship Records: DISCUSSION**

- Baseline Documentation Report
 - How many original copies?
 - How to show it hasn't been tampered with?
- Preserve Management Plans (and updates)
- Donor or Foundation or Grant obligations for stewardship
- Landowner information
- Surveys
- Photos
- Monitoring Reports
- Copy or original must be filed in Permanent File
- Violations
- Conservation Easement Amendments
- Special events
- Contracts
- Permits
- Preserve Activities
- Preserve Management Plan updates
- Biological inventory lists

❖ Irreplaceable and Essential Documents

- The Land Trust Accreditation Commission expects that every applicant for accreditation will have duplicates of the following irreplaceable and essential documents at the time of application and that the documents will be stored in keeping with the requirements of indicator practice 9G.
 - Legal agreements, deeds, conservation easements and amendments, etc.
 - Critical correspondence (such as correspondence with the landowner related to project goals, tax and legal matters, notifications, approvals, enforcement and other key matters the land trust determines essential to the defense of the transaction)
 - Baseline documentation reports for conservation easements
 - Conservation easement monitoring reports

- Desired List - The Commission advises land trusts to also duplicate the following documents. Although not required at time of application, will be required at time of review of accreditation.
 - Appraisal summaries (or full appraisal if summary is not available)
 - Forms 8283 (for projects where the landowner claimed a federal tax deduction)
 - Title opinions or title insurance policies
 - Surveys
 - Fee property land inspection records
 - Contracts and leases relative to long-term land management activities
 - Other documents as determined by the land trust

❖ Recordkeeping Policy: What

- NEW IRS FORM 990
 - Begin to keep your records with reporting in mind
 - Ensure this is an *organizational* decision
 - Review entire new 990 for organizational and transactional/stewardship recordkeeping issues
 - Individual project files need to be up-to-date
 - Consider a spreadsheet or database to track information

❖ Recordkeeping Policy: What

- NEW IRS FORM 990, Schedule D
 - **Part IV, Line 7 asks:**
 - Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas or historic structures? *If “Yes,” complete Schedule D, Part II.*

- The new Schedule D Part II asks a number of questions, including (this is not a complete list):
 - The purpose(s) of conservation easements held by the organization
 - Total number of conservation easements
 - Total acreage subject to conservation easements
 - Number of conservation easements modified, transferred, released, or terminated by the organization during the taxable year
 - Whether the organization has a written policy regarding the periodic monitoring, inspection, and enforcement of the conservation easements it holds
 - Number of staff or volunteer hours devoted to monitoring or enforcing easements during the year
 - Amount of expenses incurred in monitoring and enforcing easements during the year

- Also check on Policies, Enforcement Funds (is the organization equipped to defend its easements), *Review entire 990*

❖ **Where and How to Keep Records**

- Permanent records must be kept safe:
 - Protect from:
 - fire,
 - flood,
 - mold,
 - mis-filing,
 - loss,
 - mis-handling,
 - tampering,
 - deterioration

❖ **Where and How to Keep Records**

- Duplicate essential records and store in separate locations.
- Separate permanent files from working files
- Off-site storage (and not your garage)
- Get creative!
- How do Electronic Records fit in here?

❖ **Where and How to Keep Records**

- Convenience of accessing records
 - How do Electronic Records fit in here?

❖ **Where and How to Keep Records**

- How to Keep Records: Paper vs. Electronic
 - “Keep ‘em both” - Charles Dawley, 20-something GIS Specialist
 - Establish system for transferring electronic records
 - Research legal aspects of electronic records – *not yet proven*.
 - What to do with emails?

❖ **How – Electronic Records**

- Electronic Records
 - Electronic copy – if complete, sufficient, with processes in place to ensure permanence, CAN be your “off-site” duplicate record for Accreditation purposes
 - Use with caution

❖ **How – Electronic Records**

- Systems:
 - Leelanau Conservancy
 - Searchable, convenient, authenticated
 - Creating scanned pdf files
 - Hiring out
 - Tape back-up

❖ **How – Paper Filing System *Example***

- Cull files before permanent storage
- Develop Rubric
- Train staff and volunteers
- Create easy to understand templates and procedures
- Separate Permanent Transaction File from Working (Stewardship) File
- Will your “permanent, off-site file” be a separate file? Or your transactional file?
- Use divided file folder (Classification Folder)
- Color code files
- Use consistent naming system
- Determine logical filing system
- Allow enough time to implement system
- Get approvals and buy in. And buy lots of chocolate. And coffee.

❖ Questions and Answers

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