

RECORD MAINTENANCE AND RETENTION POLICY

I. General

§ 1 PURPOSE

1.1 Background

In recent years the growth of the Firm's practice, the proliferation of multiple files, the great increase in paper generated, and the heightened need for rapid recovery and delivery of documents in the process of representing Clients have resulted in a need to improve the Firm's filing capacity. In particular, the Firm has determined that it is essential to eliminate redundant and other duplicative files including multiple copies of identical documents, temporary notes and superseded drafts. Accordingly, the Firm has determined to adopt a comprehensive Record Maintenance and Retention Policy.

1.2 Statement

The purpose of this Policy is to control the volume of the Firm's files and to make such files more useful and accessible by providing guidelines as to the Firm's filing procedures. The provisions of this Policy are intended as guidelines for the use of the Firm's lawyers and staff; it does not constitute a contract or agreement with any Client or other third party, and the only rights that will accrue to Clients in connection with the Policy are those requirements:

- (i) Agreed to in writing between the Firm and any individual Client; and
- (ii) Required by applicable laws, regulations, and ethical rules regarding the maintenance and disposition of Client, lawyer, and administrative files.

1.3 Scope

The Policy covers Client files and records only. The records covered include all media, including but not limited to, paper, electronic, images, videotape, audiotape, magnetic disk, optical, micro film, and any other data compilation, including new technological procedures that may hereafter be developed. The Policy specifically does not cover the Firm's internal and administrative procedures which shall be separately established by the Firm Management and Records Manager.

1.4 Objectives for Responsibility

Various individuals in the Firm have responsibilities with respect to records management under the guidelines contained in this Policy.

1. *Firm Management* is responsible for final review and approval of file procedures, maintenance, record retention, compliance with the guidelines contained in this Policy, and

related matters. Firm Management will review, approve, and dispose of Client Records transferred to other law firms, including transfers resulting from attorneys who leave the Firm.

2. The *Responsible Lawyer* will supervise his or her files subject to direction from Firm Management.

3. The *Records Manager* has administrative oversight on all files subject to Firm Management and to respective Responsible Lawyer.

4. *Legal Assistants* are responsible for maintaining active Client files and preparing them for closure. The legal assistants will work with the Records Manager, the Responsible Lawyer, and other persons designated by Firm Management in carrying out these responsibilities.

5. The Firm's *File Clerk*, with such assistance as Firm Management may designate, is responsible for physical maintenance and upkeep of the files and records related thereto.

§ 2 **ADDITIONAL TERMS AND DEFINITIONS**

The following definitions shall apply to this Policy and related matters.

Active Records – Records in use for an active legal matter that are being used on a regular basis.

Billing Records – The electronic and tangible administrative files reflecting services rendered by the Firm to its Clients.

Client – An individual or entity that is actively represented by the Firm in accordance with a representation agreement or understanding.

Client Instructions – Written instructions from a Client that have been agreed to by the Firm in writing.

Client Materials – Client Records and other property belonging to the Client.

Client Records – Records generated for the use of a Client or records received from a Client during the course of Client representation.

Closed Matter – A matter on which the Firm is no longer providing active representation. A matter may be closed by unilateral decision of the Firm, by notice to the Firm from the Client, or upon termination of the provision of regular material legal representation of the Client with respect to the matter by the Firm. The matter will be deemed to be closed upon the earliest of the foregoing dates. A matter will be closed if it satisfies any of these criteria even if other matters for the same client remain open.

Closed Records – Records associated with a Closed Matter. All Inactive Records will be Closed Records even if the files have not been formally closed.

Disposition – Action taken by the Firm with respect to Closed Records, including:

1. Destruction;
2. Return or release to the Client; and/or
3. Authorized release to a third party.

Electronic Records – Records created and stored in a digital or other intangible form. Tangible Records are not Electronic Records.

Firm – Krendl, Krendl, Sachnoff & Way, P.C. and predecessors and successors.

Firm Management – directors and officers of the Firm.

Inactive Records – Records other than Active Records that have not yet been subject to final Disposition. Records will become inactive at such time as they are so designated by the Firm or at such earlier date that the last substantive services or substantive matters relating to such records are rendered by the Firm as reflected in its Billing Records.

Non-Record Materials – Any matter that is not a Retention Record. Non-Record Materials include, for example, handwritten notes, superseded drafts, legal research, and Firm administrative records.

Open Record – A file or other record for an active Client on which work is currently being performed.

Policy – This Record Maintenance and Retention Policy.

Records Manager means the Firm’s designated office manager, the Firm’s designated File Clerk or clerks, and such other personnel as Firm Management may from time to time designate.

Responsible Lawyer – The lawyer who has primary responsibility for the legal matter and who will be primarily responsible for making decisions regarding the Disposition of records. If not otherwise designated, the “Primary Timekeeper” shown in the Firm’s Billing Records will be deemed to be the Responsible Lawyer on any matter.

Retention Period – The period during which Retention Records are to be retained, usually seven (7) years as discussed more fully in § 4.3.

Retention Records – Records that are maintained after a file has been determined to be Inactive Records.

Secure Site – A safe, safe deposit box, or other relatively secure storage location designated by Firm Management to be used for valuable Client Materials.

Tangible Materials – Tangible Records and tangible property belonging to a Client.

Tangible Records – Paper records and other tangible materials such as models and prototypes.

Work Files – Informal files created by attorneys. Such files are not Client Records or Client Materials.

Work Product – Work product of the Firm including memoranda, research, notes, internal communications, and administrative records.

§ 3 **CONFIDENTIALITY**

Subject to direction from Firm Management or the Responsible Lawyer, Client Records may be deemed to be confidential. Confidentiality will not apply to materials prepared for, or communicated with Client consent, to non-clients. The confidentiality of Client Records may be waived at any time in whole or in part by the Client. The confidential nature of records may also be waived or modified in accordance with applicable law and ethical requirements, including pursuant to any court order or similar authority or direction binding on the Firm.

II. Guidelines for General Records Management

2.1 Records Management System

The Firm has implemented, and will continue to use, a record management system to manage Client and administrative records and all media in accordance with this Policy.

Within this system, the objective of the Firm is to classify and index records in an orderly way including:

1. Standard labeling and classification of tangible materials.
2. Entering information about Inactive Records, including dates of inactivity, location, and review dates.
3. Entering information about Closed Records, including dates of closing, location, and final Disposition date.
4. Maintaining any other Disposition information.

5. Application of retention schedules to manage final Disposition scheduling as expeditiously as possible.

6. Appropriate procedures for classifying and recovering Electronic Records and for disposing of such records where appropriate.

2.2 Records Creation – The Official File

Records required for a new Client are normally defined when the first file is established for such Client and/or matter. Additional subfiles may be created as needed. The Records Manager will be instructed to classify such file in accordance with definitions and guidelines then existing.

For significant Client matters, subfiles for Tangible Records including some or all of the following may be established. Where possible however, preference will be given to storing such matters as Electronic Records.

1. **Correspondence.** Correspondence files normally contain clean copies of all correspondence to and from the Firm. If the correspondence includes enclosures, copies of the enclosures may appear either attached to the transmittal letter or in a separate appropriate file cross-referenced to the correspondence. Correspondence should not normally be changed by handwritten or other notations. If such notations are desirable, they should be made on a copy of the correspondence and placed in the notes, memoranda, and legal research file. Correspondence should be organized, to the extent feasible, in chronological order.

2. **Documents.** A documents subfile normally contains only the final documentation produced. The Firm sometimes prepares formal closing binders instead of the final document file folder.

3. **Drafts.** The drafts subfile should contain only one clean, unmarked copy of each draft of the document received by or prepared by and *circulated outside* the Firm. To the extent feasible, other drafts should be destroyed when the file is classified as inactive.

Notwithstanding the Firm's prior practice of maintaining extensive drafts files, the guidance as of the effective date of this Policy is that multiple internal drafts should generally not be retained. Drafts should not be retained with handwritten comments in the drafts file. This Policy is subject to modification in any given case at the direction of the Responsible Lawyer.

4. **Notes, Memoranda and Research.** A separate file or subfiles will be retained for notes (including handwritten notes), memoranda and legal research. Handwritten notes may be discarded at the time the file is declared inactive. Redundant and duplicated materials should also be discarded where possible.

5. **Client Records.** Where appropriate, a file may be established to maintain documents and other tangible materials received from a Client and held at the Client direction as part of the active life of the file.

6. **Corporate Review/Due Diligence.** If the Firm conducts a substantial corporate review or other due diligence investigation of any matter, a separate file may be established to contain reviewed materials and comments thereon. Such files are however voluminous and, where possible, electronic files instead of tangible files will be used for this purpose.

7. **Firm Opinion File.** In cases where the Firm renders a formal opinion, it is often useful to establish a separate opinion file. Drafts should be retained in such file only to the extent directed by the Responsible Lawyer. Backup materials will also be retained only to the extent deemed appropriate by the Responsible Lawyer. Normally internal drafts and other materials related to opinions should not be retained in the drafts or other related files.

8. **Other Files.** The Responsible Lawyer or the Records Manager may determine to maintain other subfiles as appropriate. An example would be a title file reflecting title commitments and other title review information in connection with a real estate transaction.

III. Record Storage Guidelines

3.1 Purposes

There are three primary objectives reflected in this Policy. First, client confidentiality, where applicable, should be protected. Second, Retention Records should be maintained in recoverable form for the Retention Period. Third, speed, efficiency, and thoroughness of recovery is of great importance. The Firm has determined that redundant Tangible Records are counterproductive for all three purposes, and accordingly, files should be sorted when possible to eliminate redundant and unnecessary materials, and maximum use of electronic files, rather than Tangible Records, should be used. Pursuant to these guidelines, the following ancillary guidelines are suggested:

- Eliminate duplication
- Handwritten materials should be deleted unless there are authorized Firm instructions to the contrary
- Documents with a useful life beyond seven (7) years should be placed in a permanent file if so required by Client Instructions

3.2 Primary Responsibility

Routine decisions will be made by the Records Manager. Substantive matters affecting Client representation will be made by the Responsible Lawyer, subject to Firm Management direction.

3.3 Open Records and Active Records

Open records should be maintained in electronic format as Electronic Records readily available whenever possible. To the extent that Tangible Records cannot be included (or

pursuant to the appropriate decisions are not included) in the Electronic Records, they should be maintained in the Firm file room or other space designated by Firm Management.

3.4 Designated Tangible Materials

Pursuant to Client Instructions or a decision by Firm Management or the Responsible Lawyer, certain original signed documents and other Tangible Materials may be retained in one or more specially designated Secure Sites. Access to any Secure Site will be limited to persons authorized by Firm Management, and Tangible Materials to be stored therein will be properly indexed and records thereof will be available to all attorneys.

3.5 Inactive Records and Closed Records

When Inactive Records or Closed Records are not in circulation, they need not be located at the Firm offices. Such Inactive Records may be stored in either hard copy or electronic format, but preference should be given to electronic format. The Firm may continue to contract with commercial off-site record storage service vendors for storage, retrieval, delivery, refilling, indexing, and other appropriate file services.

3.6 Review of Inactive Files

When a file is determined to be inactive, the file clerk and appropriate legal assistants, under the direction of the Responsible Lawyer, will attempt to reduce the volume of Tangible Records to be stored by reviewing the file and removing documents that, pursuant to the existing guidelines, are not required to be part of Retention Records. Ideally, this will be accomplished promptly after the matter becomes inactive and before the records in question are transferred to an off-site location, but such file review may be completed at any time it is convenient for Firm personnel, subject to other demands on their time.

IV. Record Storage Guidelines

4.1 Firm Policy

The Firm's objective is to comply with all applicable legal requirements for the management of its records.

4.2 Notification

At the outset of representation of each new Client, the Firm will endeavor to advise the Client, preferably in connection with the Firm's representation agreement, of the Firm's policy. Attached hereto as Annex A is a statement that will, subject to subsequent adjustments and modifications, normally be annexed to the Firm's standard representation agreement. Normal practice of the Firm will be to make two attempts to contact a Client at the Client's last known address. At least one attempt to contact the Client will be made thirty (30) days before the Firm

makes any decision to dispose of records. In the event such efforts fail, the Firm retainer agreement will constitute notice of the Firm's policy to destroy Inactive Records after the final Retention Period. For Clients who pre-date the adoption of this Policy, the Firm will provide written notice of its Policy and the terms of Annex A thirty (30) days prior to the final Disposition of records constituting Client Materials. The delivery of such notice shall have the same effect as a signed representation agreement incorporating the Firm's standards. If the Firm is unable to communicate with any existing Client who has not otherwise agreed to and accepted the standards set forth herein, the Firm will make reasonable efforts to contact such Client prior to the final Disposition of any Client records.

4.3 Retention Period

The Firm's normal Retention Period is seven (7) years for Client Materials. If there are no Client Instructions or Firm directions to the contrary, pursuant to thirty (30) days written notice to the Client as set forth in Rule 1.16(A)(a)(2) of the Colorado Rules of Professional Conduct if there are no pending or threatened legal proceedings known to the Firm that relate to the matter, the Firm will authorize final Disposition, including destruction, of Client Materials seven (7) years after the matter in question becomes inactive. In addition, pursuant to Rule 1.16(A)(b) of the Colorado Rules of Professional Conduct, if the Firm has not otherwise agreed, the Firm will authorize final Disposition, including destruction, of Client Materials ten (10) years after the matter becomes inactive or termination of the Firm's representation in the matter without notice to the Client if there are no pending or threatened legal proceedings known to the Firm that relate to the matter. The Firm may, however, in its discretion choose to retain some or all of such records for an extended period of time either in the interests of the Client or for the Firm's administrative purposes.

4.4 Destruction of Records at Client's Direction

If requested pursuant to Client Instructions, the Firm will utilize its reasonable efforts to destroy all Client Materials. If Materials belong to or relate to two or more Clients, authorization from all affected Clients will normally be required for destruction or other Disposition of such Materials. However, the Firm may, notwithstanding Client Instructions, retain any Firm Work Product. Moreover, although the Firm may take reasonable actions to delete Electronic Records, the Firm recognizes that it cannot assure such destruction in view of the potential for recovery of apparently deleted records through technology that may now or hereafter exist. Accordingly, the Firm will not normally give any assurance to Clients that Electronic Records have been entirely destroyed.

4.5 Delivery of Records to Client

Upon reasonable written request of Clients, the Firm will deliver to the Clients all Client Materials. If the Materials in question belong or relate to two or more Clients, then the Firm will normally require written direction from all of the affected Clients before delivering the records to any Client, but such guideline may be modified to the extent that Firm Management or the Responsible Lawyer determine in any particular case that delivery of particular Client Materials to a particular Client is justified. The Firm may, where it deems appropriate for ethical or other

reasons, maintain duplicates of any Client Materials delivered to the Client and, pursuant to a decision by Firm Management, the Firm may decline to deliver copies of materials that constitute Client Materials if the Firm believes that, for legitimate reasons, the originals of such materials must be retained by the Firm for a temporary or extended period of time.

4.6 Retention of Permanent Records

Notwithstanding the fact that the Client may, pursuant to Client Instructions, have designated any Client Materials as Retention Records to be held beyond the Retention Period, the Firm reserves the right to redeliver such materials to the Client, with such delivery constituting complete satisfaction of any obligation the Firm may have pursuant to the Client Instructions. If the Firm, after reasonable repeated efforts, is not able to communicate with the Client or receive a response from the Client, the Firm may destroy such Client Materials notwithstanding the Client Instructions.

4.7 Destruction Procedures

When destroying files or particular materials, the Firm will endeavor to take, or cause its agents to take, appropriate actions to protect the confidentiality of Client information. Normal destruction procedures will include shredding or pulping for paper records and demagnetized processes for Electronic Records such as CDs, DVDs, and floppy disks. Destruction procedures may also include any procedures now or hereafter recognized as customary in the appropriate industries.

4.8 Client Contact Information

All Clients will be requested to provide continuing contact information including address, telephone number, e-mail address, and other means that permit prompt communication with the Client. The Firm will endeavor to advise all Clients that if such contact information is available, the Firm may from time to time contact the Client to determine if specific records should be retained and may offer to deliver to the Client some or all of the Client Materials in the possession of the Firm. Clients will be advised that if they do not provide such contact information, the Firm will, after reasonable efforts have been made to communicate with them, reserve the right to destroy or otherwise dispose of some or all of the Client Materials.

4.9 Disposition of Work Product

Work Product and other proprietary property of the Firm, including Work Files and administrative and other internal files, are the sole property of the Firm. The Firm will periodically review Work Product, and in its discretion, destroy or otherwise dispose of such Work Product.

4.10 Costs of Storage and Delivery

Where significant identifiable costs are incurred with respect to the storage of files for particular Clients, the Firm may require that such costs be reimbursed by the Client. In the event

that the Client requests delivery of Client Materials or other materials to the Client, the Firm reserves the right to charge the Client for the reasonable costs incurred in connection therewith, including the cost of personnel time spent assembling, packing, and shipping such files.

4.11 Firm Responsibility

The Firm has established these policies in part to reflect its responsibility to maintain adequate files for Clients. The Firm will take prudent actions to protect such files. However, the Firm is not a guarantor of file safety, the Firm recognizes that the Client Materials, even when stored in a Secure Site, are subject to natural catastrophes, terrorism, hazards of war, and other conditions beyond the control of the Firm. Accordingly, Clients with valuable property will be discouraged from leaving such property in the possession of the Firm, and Clients will be encouraged to maintain duplicate copies of all Client Materials that must of necessity be delivered to the Firm.

V. Adoption and Amendment

5.1 Adoption

This statement of Policy guidelines has been adopted on the date and year set forth below, and to the best belief of the Firm, represents compliance with all applicable, legal, and ethical standards as of that time.

5.2 Amendment and Variation

These policies are intended as guidelines only. If at any time the Firm determines for any reason, including modification of ethical guidelines or the Firm's interpretation thereof, these policies may be amended formally or informally, and variations from the established policies are permitted, subject to approval and authorization by Firm Management.

5.3 Third Party Reliance

These are policies for the internal guidance of the Firm's employees and agents. Third parties, including Clients, should not rely on these policies but should instead rely on any Client Instructions or other communications between the Client and the Firm.

Dated March 2011.

ANNEX A
NOTICE CONCERNING CLIENT RECORDS

Client Consent. As a condition to receiving legal representation from Krendl Krendl Sachnoff & Way, Professional Corporation (the “Firm”), each client of the Firm (“Client”) agrees to the following provisions with respect to maintenance of Client records by the Firm.

The Firm has established certain document maintenance and retention policies and guidelines (the “Policy”), a copy of which is available to the Client upon request. The Policy includes definitions of capitalized words. This Policy is subject to change from time to time without prior notice to any third party, including the Client. The Policy is designed for the efficient operation of the Firm and does not confer any rights on the Client except as otherwise agreed to by the Firm and the Client in writing.

Subject to the foregoing, the Client understands and agrees as follows:

1. **Client Materials.** With the Firm’s consent, the Client may deliver documents and other tangible materials to the Firm. If agreed by the Client and the Firm in writing, such materials shall be preserved in the Client files or other Firm facilities, but the Firm reserves the right, absent any written agreement to the contrary, to destroy any materials that it deems to be duplicative of other documents in the Client files or otherwise unnecessary to retain.
2. **Multiple Clients.** Whenever two or more Clients have interests in the same files or other materials, the Firm may decline to follow instructions from one Client with respect to such materials unless all of the Clients agree in writing.
3. **Delivery of Materials to Client.** To the extent that Client materials are retained in the Client files by the Firm, all affected Clients may request a return of such Client materials. The Firm reserves the right to make copies and extracts from such materials for its own records or for other reasonable purposes and to decline to deliver such materials if prevented for any reason by legal or ethical constraints.
4. **Firm Work Product.** Upon written reasonable request, the Firm further agrees to deliver to the Client any documents prepared by the Firm for the Client at the Client’s specific request or direction, subject to prior payment of all amounts due to the Firm from the Client. The Firm may satisfy this obligation by delivering photocopies, facsimiles, or electronic versions of such documents. In almost all cases, the Firm preserves documents only electronically, and therefore the Client agrees that an electronic delivery will satisfy any request the Client has unless the Firm and the Client have agreed otherwise in writing with respect to any particular document.

5. **Other Work Product.** The Firm may, in its discretion, also deliver copies of other materials to the Client such as memoranda of law, drafts, and other work product of the Firm. However, all of such documents are the work product of the Firm, and the Firm may, in its sole discretion, retain all such documents or destroy them.

6. **Destruction of Records at Client Request.** After seven years, if requested by the Client, the Firm will use reasonable efforts to destroy any Client materials in the possession of the Firm, including, if specifically requested by the Client, electronic versions of documents. The Firm and the Client recognize, however, that even a good faith effort to delete or otherwise destroy electronic records may be subject to recovery by specialized technical means, and accordingly under no circumstances will the Firm guarantee that it is able to destroy or otherwise eliminate all copies of any document.

7. **Destruction of Inactive Files with Client Notification.** Any Client file or other materials in the possession of the Firm with respect to a matter will be deemed to be inactive at any time when no material services have been rendered by the Firm with respect to any matter for a consecutive period of at least twelve (12) months. The file will also be deemed to be inactive if so designated by the Firm or if requested to be treated as inactive by the Client. Seven years after the earlier of (i) the date on which services of a material nature were last rendered with respect to such matter by the Firm, or (ii) the file was otherwise declared inactive by the Client or the Firm, the file and all materials therein are subject to final disposition, including destruction in the discretion of the Firm. Unless the Firm has otherwise agreed in writing with the Client, the Firm reserves the right to destroy all such files and all materials therein after thirty (30) days written notice to the Client as set forth in Rule 1.16(A)(a)(2) of the Colorado Rules of Professional Conduct if there are no pending or threatened legal proceedings known to the Firm that relate to the matter. The Client may, at any time prior to actual destruction of such files, make written request to the Firm for delivery of some or all of such files. The Firm will, subject to the terms of this Notice and reimbursement for reasonable expenses incurred in connection with delivery of the items, use its reasonable efforts to deliver such items to the Client. Such delivery is in all cases subject to the Firm's right to retain originals and/or copies of such items.

8. **Destruction of Inactive Files without Client Notification.** In addition, pursuant to Rule 1.16(A)(b) of the Colorado Rules of Professional Conduct, if the Firm has not otherwise agreed, the Firm will authorize final Disposition, including destruction, of all inactive Client files and materials therein related to the matter, ten (10) years after the matter becomes inactive or termination of the Firm's representation in the matter without notice to the Client if there are no pending or threatened legal proceedings known to the Firm that relate to the matter.

9. **Contact.** It is essential that the Firm continue to have contact with the Client. If the Client requests the return of the files or the preservation of files for any period of time extending beyond the Firm's normal seven (7) year period for retention, the Firm has the right to verify the need to continue to hold the files and the right to deliver the files directly to the Client. If the Firm is unable to contact the Client, the files may be destroyed. Accordingly, any Client wishing for the Firm to continue to maintain its files, or wishing to have the right to have such files delivered to the Client, should keep the Firm advised at all times of a current address and other contact information for the Client.