

RETHINKING YOUR DOCUMENT RETENTION HABITS WHILE SPRING CLEANING?

Springtime can be a good excuse to “clean house.” If you are evaluating your document retention practices this season, consider these points as you determine what to keep and what to toss:

- If you are involved in litigation or reasonably anticipate litigation, you are required to keep all documents related to the case by implementing what is referred to as a “litigation hold.” This includes suspending automatic deletion features on servers or email systems. Courts can issue monetary sanctions or even enter an adverse judgment for failure to take reasonable steps to preserve documents related to litigation.
- Know and comply with all regulatory document-keeping requirements that may apply to you or your business. As just one example, lenders are currently subject to record retention requirements under federal lending laws that include keeping closing disclosures for five years. See 12 C.F.R. § 1026.25. If you are unsure of the governing requirements, consult an attorney.
- Weigh the costs and benefits of keeping documents. On one hand, it can be valuable to be able to dig out old documents when an unexpected problem or opportunity arises. Quickly finding key correspondence to defeat a threatened lawsuit can save money and headaches. On the other hand, storing documents—whether paper or electronic—has real costs. Paper documents take up space that may be used for more productive purposes. The storage of electronic documents and emails has costs, as well, including hardware, software, maintenance, and tech support. A good document retention policy aims to balance these competing interests.
- Documents are only useful if you know where and how to find them. Just like a storage room full of unlabeled paper files, electronic records that are haphazardly stored, poorly named, or unsearchable are of limited value.
- Consistency is key. A formal document retention policy that is reliably implemented is best. In the event of a future lawsuit or dispute, a document retention policy that was consistently followed could minimize discovery disputes over destroyed documents.

If you are unsure of the legal implications of keeping or disposing of certain documents, contact an attorney. For more information, contact [Christa Wittenberg](mailto:Christa.Wittenberg@wilaw.com) at 414-276-5000, Christa.Wittenberg@wilaw.com, or any of the other attorneys at OCHDL.