

Record Retention

DRE Record Retention Requirements: How long, what type, where and exceptions

How long. The DRE requires that transaction files be retained for **three years**. This retention period begins as of the date of the closing of the transaction, or if there is no closing from the date of the listing.

What type. A non-exclusive list of documents to be retained include, but is not limited to, "all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required."

Where. Records may be maintained **off site**, if brokers ensure that the records are stored securely and are readily accessible. After notice, the broker must make all records available to the DRE's designated representative for examination, inspection, and copying during regular business hours at the broker's office location.

Records may be maintained **electronically**. (See Cal. Code of Regulations 10 CCR § 2729)

Exceptions. A broker does not need to retain any "electronic message of an ephemeral nature that is not designed to be retained or to create a permanent record, including but not limited to, a **text message or instant message** format communication..." (Civ. Code Section 1624, Bus. and Prof Code section 10148(a)). Thus, instant messages do not need to be retained, nor do text messages unless they are specifically designed to be retained or create a permanent record. REALTORS® should maintain emails since many emails are of a more substantive nature and are more easily stored than text or instant messages.

Other File Retention Considerations:

Litigation Concerns: Many defense litigation attorneys recommend that brokers keep listing and transaction files for seven years due to varying statutes of limitation.

Disposing of Records and Personal Information: At the end of the retention period, all records should be disposed of properly. Client records containing "personal" information must be destroyed either by shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means. "Personal Information" means any information that identifies or is associated with an individual, including *but not limited to* name, signature, social security number, address, telephone number, or any financial information (Cal. Civ. Code §§1798.80 & 1798.81).

Tax-Related Documents: Documents supporting a tax return (bills, receipts, etc.) should be kept for at least four and up to six years. Generally, the IRS has three years to begin an action from the time a return is filed, and the California FTB has four years. However, if your income has been understated by more than 25%, the IRS and FTB have six years to start legal action to collect the taxes. Note that there is *no* time limitation on starting an action by the IRS or FTB if the taxpayer has filed a false or fraudulent return.