

# Best Practices for Records Management



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Published on [www.lorman.com](http://www.lorman.com) - December 2017

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There are few laws that are taken more seriously than those that govern the privacy and integrity of personal information. In recent decades, the increasing number of identity theft incidents and other electronic types of fraud has placed a spotlight on the management of everything from client legal records to their medical information, insights into their finances, and more. For the average law firm, all of these types of records tend to intersect based on the unique type of case being pursued and the unique type of information required to assist a client through each step of a legal procedure. Managing these records successfully must absolutely be a key focus of every law firm, no matter its size. The reasons for this are numerous, but they can generally be boiled down into a few key components.

### **The American Bar Association Demands It**

As part of the American Bar Association's guidelines, best practices, and ethical requirements, the professional organization places the burden on lawyers to responsibly manage a client's records and personal data. It is the responsibility of lawyers to ensure that records management, whether it's consistent filing procedures or a clear statement of information ownership, is pursued throughout their law firm. Any errors made by the law firm's staff members or associates reflect directly on the law firm's partners or leadership, at least according to the ABA. That represents a pretty big impetus for sound management and upkeep in every law firm across the country.

### **State Regulations for Client Privacy are Getting More Stringent**

Over the past decade or so, the rise of electronic spying, malicious hacking, and damaging identity theft have forced virtually every state across the country to take a good, hard look at how its laws regulate and guarantee the privacy of its residents. In many cases, privacy laws designed for a 20th century world were deemed inadequate and revised, placing more responsibilities on law firms, medical practices, and financial firms to look after client data. Many states, like the American Bar Association, hold corporate or firm leadership responsible for any negligence in promoting identity theft or a lack of essential privacy.

## **Federal Regulations are Tightening Just as Quickly**

Finally, the federal government has been keeping an eye on consumer privacy laws for quite some time. Perhaps the best-known regulations concerning privacy are contained in the HIPAA laws. These laws govern an individual's medical information and regulate how it can be used, stored, and shared between medical practices, between legal professionals, and between any other interested parties. Alongside HIPAA, the government has meticulously focused on electronic privacy and recourse, as well as client records privacy in private practices across the country. The best way to stay in lien with these regulations is to adhere to records management best practices on a consistent basis.

## **Best Practices Defined: A Comprehensive Approach to Expiration, Retention, and Maintenance**

When it comes to records management, the process is actually pretty comprehensive. Best practices for those in the legal process concern who owns the file, as well as establishing an agreement with the client concerning this ownership and the law firm's policy of file retention both during and after the legal proceedings are complete. Law firms also need to establish a policy of education concerning privacy laws and they must commit to regular maintenance of client files to ensure that key information is stored away where it remains confidential and away from public view. All of these requirements can be reduced to several simple steps and procedures that will result in better organization and recourse for all parties involved.

## Step 1: Begin with the End in Mind

Most law firms have already established a pretty comprehensive approach to client intake, where they discuss everything from attorney fees to the reasonable expectations of an outcome in a given period of time. This intake procedure typically covers the firm's policy of attorney privilege and client confidentiality, but it may be missing a key component that deals with client files and long-term privacy. Indeed, many firms simply don't pay very much attention to educating their clients about their rights and responsibilities when it comes to their personal information stored at the firm. This needs to change in order for today's attorneys to fall in line with ABA recommendations, state regulations, and federal guidelines.

The saying "begin with the end in mind" is key in this situation, since it informs how to discuss the firm's filing procedures and commitment to privacy with new or prospective clients. Before collecting any personal information from the client, or requesting that any records be submitted to the firm, be sure to cover what the firm will do with those records during the case and how they will be handled with the legal procedure is over. Be sure to engage the client in a discussion of who owns the record during and after the process, as well as if ownership will change at any point during their relationship with the firm. Finally, be sure to cover whether or not the file will be destroyed at some point in the future, as well as how that process will be completed and what assurances the client can depend on while they provide their personal information and records.

By discussing how information is used, who owns the information, and how the outcome of the case might change both of those things, law firms can protect themselves from lawsuits and uncertainty on behalf of their clients. They'll further establish a more trustworthy relationship and one that inspires greater trust and confidence. As an added bonus, clients that feel their information is safe are simply more likely to provide greater personal details and records that can help the course of the case without hesitation.

## Step 2: Aspire to Uniformity and Consistency in Records Retention and Management

The nightmare scenario for today's law firms is that they simply misplace a client's personal information before it has had a chance to be placed in to their personal file. The information, with no guarantees of its safety or confidentiality, is suddenly on the loose. The law firm experiences a period of great uncertainty and potential legal liability, and that can create a chaotic environment that suddenly diverts its attention away from the client's actual case proceeding through the courts. It's not a good situation to be in, and it can be easily avoided by committing to consistency.

Records management practices must be established early on, and they must be the responsibility of every law firm employee. That's true even if the firm hires a dedicated file clerk that specifically handles confidential documents and file creation. Creating a consistent filing environment will greatly reduce the likelihood that documents go missing, or that they escape the firm, and therefore will reduce the firm's liability and help it retain a strong focus on its actual cases. Among the consistent policies that need to be established to ensure excellent records management:

- A consistent filing schedule must be created and enforced. Larger firms may wish to file every day or every other day, while smaller firms might set aside a single day of the week when all files are updated, reviewed, and verified by a dedicated file clerk or another professional within the practice.
- A separate schedule should be established for file archiving, which involves handling files related to cases that have already closed and experienced an outcome of some sort. Archival is the first step to managing a transfer of information back to the client, and it's also the first step taken if a file is marked for destruction by the firm to protect the client's privacy. Because archival is less frequent than new filing, larger firms might set aside one day a week for this process while their smaller counterparts might set aside a single day of the month to process and enact any archiving that needs to be done.

- A policy should be established for retrieving client records and files if they're requested by a party involved in litigation. Generally, larger firms should have a small pool of file clerks who can be trusted to retrieve and deliver files while adhering to privacy rules. Smaller firms may have a single, dedicated professional who can handle file requests and transfers during an active case.

- Regular filing, records archival, and even file destruction should be subject to a set of specific policies developed by the law firm. These policies will govern the process of each task, and they'll include procedures that protect client privacy, provide redundancy where necessary, and keep the firm in line with ABA guidelines and state regulations.

### Step 3: Create a System of Client and Law Firm Verification and Accountability

The procedures and adherence to consistency established by the law firm is only good if it can be actively enforced. The best way to do this is to create a system of accountability that requires clients and law firm employees to go on the record as having performed a task, adhered to best practices, and maintained privacy throughout each of their actions. Generally, this can come in a few key ways for each side of the transaction.

#### **Signed Client Agreements and Verification Documents**

Law firms need to make sure that their clients are verifying the transfer of information, as well as their understanding of how their file is treated during the case and what happens to it afterward. During the intake procedure, a document stating how the firm handles information, what it does with the file, and how it manages consumer information after the case, should be presented to the client and they should be required to sign this document as an indication of their understanding.

If the client requests a transfer of any information within their file back into their ownership during or after the case, they should have to sign a statement declaring which information was requested, the purpose for the request, and the successful completion of that request with the law firm's employees. The law firm employee handling this transfer of information should also be required to sign the document, essentially holding both parties accountable for the information request and its successful outcome.

### **Filing Procedure Checklists for Law Firm Employees**

To ensure strict adherence to state and federal privacy laws, law firms should establish a filing policy and procedure as recommended earlier. Of course, this process must be enforced by the firm in some way to ensure that employees aren't cutting corners or running afoul of the firm's own recommendations. The best way for most law firms to do this is to institute a checklist of procedures and items that were taken care of during scheduled filing or archival periods. The checklist should contain a small area for the employee to provide their initials next to each step or policy that was followed. The initials should also be dated. When filing is complete, this form should be returned to human resources or another relevant department within the firm. It should be kept within the client's file in case any disputes or litigation result from that day's filing.

Today's law firms should generally create four distinct checklists that can be used by file clerks or other professionals in the office. Among these:

- A routine filing checklist
- A file-closing checklist
- A file destruction checklist
- An information request and transfer checklist

In addition to these checklists, signed statements should accompany any procedure that results in the closure, destruction, or transfer of information for any reason. Employee accountability is absolutely essential in a legal environment and these initialed checklists will help to ensure the process is a verifiable one.

#### Step 4: Consider the Creation of Electronic Records Instead of Paper Ones

The digital age arrived long ago, but many law firms are still stuck in a routine that places great importance on print records and other documents essential to their desired legal outcome. The reason for this is pretty easy: Most court systems still produce paper documents, and the easiest way for clients to share their information with both the courts and their attorney is by making paper copies and submitting them upon request. Even so, it's not very difficult to scan these documents, store them electronically, and then return original or paper copies to the client when such a practice is permitted. Though it might seem that digitization of client records actually harms information security, this is not really the case. While paper files are behind lock and key, electronic records benefit from a few key improvements:

- Many electronic filing applications actually allow for military-grade encryption of client files. This encryption can only be broken by entering an approved password established by the firm. Separate access keys can be given to each employee responsible for records maintenance or document scanning, and their privileges can be revoked at any time based on their adherence to privacy practices and law firm procedures.
- Electronic filing makes it easier for the firm to keep documents organized, since the presence of a scanned image is easier to keep track of than a paper version that might fall to the floor, disappear for a few days, and cause a bit of panic around the office.

- File destruction is far easier to complete when the file is entirely electronic. There is a far lesser risk of identity theft than if the documents were thrown out with the weekly trash and clients can often view their own file online as the case proceeds so that they know exactly which pieces of their identity will be destroyed upon its completion.

- Productivity is enhanced by electronic filing and records management systems. Employees can scan documents and place them in client files more easily, and they benefit from not having to keep track of paper copies. The same office verification procedure can still apply, with initialed checklists that enforce both traditional and electronic privacy concerns and proper procedures.

- Information transfers to a client are conducted in a highly secure way, with most electronic records management systems maintaining an encrypted link between the client and the firm when electronic documents are sent back and forth. This type of encryption simply doesn't apply to a misplaced paper version of the same information, placing both law firms and their clients at risk of accidental identity theft.

#### Step 5: Remember the Importance of Employee Education

Most employees have no desire to deliberately run afoul of privacy guidelines instituted by the American Bar Association, the state legislature, or the federal government. Even so, many people are not typically educated on privacy practices and concerns, and their lack of adherence to best practices might be due to this lack of information. Law firms that are serious about adhering to best practices need to make sure that their employees know why the company has instituted such procedures, how it impacts their jobs and their clients' lives, and why it matters in the long run.

By regularly reviewing privacy laws with law firm employees, the practice can tie together the importance of "beginning with the end in mind," filing on a regular schedule, and verifying that proper procedures were performed every time, on every file. Employees who know more about the seriousness of privacy laws and regulations are typically more serious about compliance, and a whole team of educated employees can help each other remember the basics about information protection, regular file maintenance, and the respect of client confidentiality that is at the very heart of every law firm's long-term success in the industry.

#### Step 6: Commit to a Regular Review of Industry Developments and Company Practices

Technology is changing almost by the day, and that means privacy laws are typically changing just as quickly in order to catch up to the latest developments concerning law firms, medical practices, educational institutions, and more. Lawyers in charge of their own firm, and attorneys engaged in a partnership, should be sure to establish a policy of regularly reviewing new developments in state law, federal guidelines, or American Bar Association materials, which might force them to change their own firm's policy of client record maintenance and organization.

By staying on top of new developments concerning privacy, the firm further insulates itself from the potential for a client lawsuit or other negative consequences that can arise from simple ignorance of new laws. It's a concept that should resonate with attorneys, all of whom know that ignorance of the law is simply not a defense when a law has been broken.

## Step 7: Establish a Policy of Holding Employees Accountable

Finally, law firms need to make sure that their verification procedures are enforced through a system of consequences that might be experienced by a noncompliant employee. Establish a system of warnings and consequences, and use these as teachable moments that will help each employee better protect the identity of their clients and the integrity of their personal information throughout the course of a typical legal proceeding. By making sure that employees know the consequences of negligence in this area, their compliance with law firm rules and recommendations will be more likely.

### **With Consistency and Accountability, Best Practices are Easy and Straightforward**

Privacy laws are changing quickly and getting more extensive by the day, but law firms can easily adhere to these laws by following the industry's best practices concerning file management and ownership. By beginning with a statement about who owns client information, how it's used, and how long it will be retained, law firms set the stage for excellent exchanges between themselves and their clients. Holding each employee accountable for regular filing and an adherence to industry laws and guidelines will reduce exposure to lawsuits and damaging litigation.

With a policy of reviewing privacy laws on a regular basis, and educating law firm employees about how they can comply with both new and old laws, the firm will make a bold move into 21st century filing that protects themselves, gives their clients confidence, and establishes their employees as committed to confidentiality and the integrity of each client's identity.

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