GOVERNANCE

Compiled Guidance

ABOUT THIS DOCUMENT

This document compiles the Land Trust Alliance’s guidance for the accreditation indicator elements in the Governance category. With background information on and explanations for each practice element, these narratives provide guidance to help land trusts implement the practices and understand the requirements for accreditation.

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B. Mission, Planning and Evaluation

2. Establish strategic goals for implementing the mission, and then review and update them, as needed, at least once every five years
   a. Revisit the mission during the strategic review to confirm it is relevant.*

Accreditation indicator elements located at www.landtrustaccreditation.org

THE IMPORTANCE OF ESTABLISHING STRATEGIC GOALS

A mission statement helps keep an organization on track, but does not provide sufficient direction to shape activities and programs. Every land trust also needs to develop more specific strategic goals and program plans to see that its mission is carried out. Strategic goals are the principal outcomes the land trust is working toward, together with the general strategies or methods it will use to achieve them. Strategic or long-range planning is the process by which the organization determines its strategic goals and how it will achieve them. In a typical planning process, the land trust’s governing board develops a common vision of what it wants the organization to achieve, consistent with its purpose and mission. Then it establishes long-term goals to achieve this vision and activities that will make progress toward and ultimately achieve the goals.

A good strategic plan can energize, unify and inspire board and staff because it engages everyone in a common understanding of where the land trust wants to go and what it will take in time, expertise and funding to get there.
A good strategic plan can also help attract funding. Because most donors want to know what they are investing in and how their money will be used, they are grateful for a thoughtful plan that gives them the answers. Some donors will even help fund the process of developing a strategic plan because they understand how important it is to the success of an organization.

**STRATEGIC PLANNING PROCESSES**

The strategic planning process can take many different forms, depending on the particular circumstances of each land trust. Organizational size, scope, complexity, style, previous planning initiatives, the land trust’s attributes and current internal and external situations all influence the approach to planning. While it is common for land trusts to touch upon strategic direction and goal-oriented activities in board meetings and within the daily course of business, most land trusts will benefit greatly from deliberate and comprehensive strategic planning activities and decision making, documented for later reference and evaluation. More than one meeting may be necessary to fully explore and build consensus around the organization’s mission and long-term goals.

In general, the strategic planning process can be divided into seven major phases:

1. **Getting set up for success: pre-planning and research.** Seek agreement to participate in strategic planning and “plan to plan.” Set up a planning committee. Identify specific issues or choices that strategic planning should address and gather any further information needed for decision making.

2. **Articulating vision and mission.** Write or review your vision and mission statements and make revisions as needed.

3. **Assessing the environment.** Review your past and current strategies and the effectiveness of your programs, seeking input from internal and external sources. Identify additional strategic issues and questions to be addressed.

4. **Agreeing on priorities.** Analyze your organization’s strengths, weaknesses, opportunities and threats. Choose criteria for setting priorities and select strategies. The board should assist staff in writing long-range goals and specific objectives and in developing long-term financial projections.

5. **Writing the strategic plan.** Planning committee and staff draft a strategic plan for board review and approval.

6. **Implementing the strategic plan.** Create a detailed annual plan and operating budget.
7. **Monitoring and evaluation.** Evaluate the strategic planning process, and regularly review and update the plan at least once every five years.

Here are some common considerations for land trusts conducting strategic planning.

**WHO TO INVOLVE**

Most strategic planning initiatives include discussions among the organizational leadership – its governing board and staff. It can be very helpful to frame discussion by setting expectations for planning sessions beforehand, including broad areas for examination on a meeting or retreat agenda, and providing historical and situational context within the discussion.

Some planning also includes opportunities for input from key stakeholders and organizational constituents, such as community leaders and groups, the land trust’s members, donors and funders and the general public. This input may be collected in several ways, including face-to-face meetings, focus groups, individual interviews and surveys. Strategic planning processes designed to engage broad constituencies can be extremely helpful in shaping the vision and goals; however, these initiatives are more time-consuming and expensive to implement and may be best accomplished through the engagement of professional contractors who can perform the work without draining the land trust’s personnel resources or diverting attention from regular operating activities. Engaging an outside contractor for the purpose of collecting stakeholder input may also lead to more honest feedback if those surveyed can be promised anonymity.

> For accreditation, a land trust will need to document how the board was involved in establishing strategic goals (or a strategic plan) and that it reviewed the goals or plan within the past five years.

**TIMEFRAME**

Strategic planning generally covers a period that may vary in length, according to the land trust’s circumstances, from three to ten years. Organizations that are newly formed or that have recently experienced changes in leadership, size, staff, mission or external circumstances may wish to consider a shorter timeframe as their operations adjust. Land trusts with established internal and external situations and those not contemplating significant changes to their operations may choose to plan with a longer horizon with regular reviews at least every five years.
SITUATIONAL ANALYSES: INTERNAL AND EXTERNAL

All strategic plans, even very simple ones, should be based on a thoughtful assessment of the land trust’s unique position in its community, the changing environment in which it operates, the special strengths and weaknesses of the organization and the likely threats and opportunities that lie ahead. This is often referred to as a SWOT (strengths, weaknesses, opportunities and threats) analysis. SWOT analyses are often conducted as a lead-in to discussion of strategic vision, goals and activities.

THE ESSENTIAL QUESTIONS

For the long term

- **Mission.** What is our overall purpose and what public interest do we serve?
- **Vision.** What do we want the future to look like? If we succeed, what will happen?
- **Values.** What basic values do we share within our organization? What values do we want to communicate to the public?

In the next number of years covered by the plan

- **Goals.** What outcomes or results will we work toward in order to carry out our mission? In the next xx years (the number of years covered by this plan), what will we have achieved?
- **Strategies.** What general approaches and methods will we use to achieve each goal?
- **Objectives.** What specific accomplishments and critical actions will be most effective to implement each strategy, and when will we do them?
- **Personnel plan.** What people and expertise will we need, when will we need them and how will we get them?
- **Cost Projections.** What will it cost to carry out the strategic plan, goals, strategies and objectives?
- **Funding plan.** How will we secure the necessary funding to carry out the plan?
- **Evaluation.** How will we evaluate our efforts? How will we know if and when we are successful? What are we measuring?
SELF-GUIDED OR FACILITATED

Strategic planning can be accomplished across a wide spectrum of formality, scope and expense. Some organizations feel comfortable completing the process using only internal personnel. Many land trusts hire a consultant or facilitator to help them through all or part of a strategic planning effort. An external consultant can be very helpful in larger planning initiatives, including those gathering input from broad groups of stakeholders. A facilitator enables everyone to participate (it is difficult for whomever is leading the discussion to also take part in it), helps ensure points of view are not overlooked and helps minimize unproductive arguments or lengthy discussions over unimportant points.

PUTTING THE PLAN TO PAPER

Most land trusts will document their strategic planning for easy reference and evaluation. As one executive director of a small New England land trust wrote on the Land Trust Listserv:

I use [our strategic plan] to direct my priorities. I found it very frustrating to NOT have one, because as the only staff, I had very little direction and input into how I should be spending my time. Now I have something in writing — that the board has chewed on and consented to — that should guide my efforts more efficiently.

Written strategic plans may run the gamut from meeting notes and discussion summaries to stylized publications produced with the intent of sharing with major donors and the public.

REVIEWING THE STRATEGIC PLAN AND EVALUATING PROGRESS

A land trust’s strategic plan should provide ongoing direction throughout the span of its term. Determining how often and to what extent the plan is reviewed is a function of the organization’s governing body and will depend on the individual circumstances of the land trust.

Many organizations will make reference to the strategic plan throughout the year, when evaluating programs and considering new opportunities. This ongoing review is usually informal, iterative and may focus on particular portions of the plan, rather than the plan in its entirety. For organizations with longer-term plans, review the full plan at least every five years to ensure that programs and activities continue to advance strategic goals.
Periodically, an organization will need renewed, deliberative discussion of its performance and the continued appropriateness of the plan’s statement of mission and goals. Typically, an organization undertakes this examination toward the end of the three to ten-year span of the plan’s term, although there may be cases where mid-term revisions are warranted.

It is possible that a land trust may fundamentally change its mission and goals over time. But it should do this deliberately, not by chance, with full discussion of the reason for and likely impact of the change.
STANDARD 2 COMPLIANCE WITH LAWS

B. Nonprofit Incorporation and Bylaws

1. Incorporate or organize according to the requirements of state law and maintain legal status.

Accreditation indicator elements located at www.landtrustaccreditation.org

INCORPORATING AS AN INDEPENDENT NONPROFIT CORPORATION

Most land trusts, particularly those owning land or holding conservation easements, have chosen to create a separate entity — a nonprofit corporation — through which to conduct business. As a corporation, the land trust itself, rather than the individuals associated with the land trust, is responsible for the financial, legal and business affairs of the organization.

Decisions in nonprofit corporations are, by definition, no longer made by individuals. Decisions are made collectively by a group — either by the organization’s board of directors (or trustees or governors, as they are known in some states) or by the organization’s members. A corporation must establish formal rules to govern how it makes and documents decisions and conducts business. These rules must comply with local, state and federal laws, regulations and reporting requirements. They include articles of incorporation, bylaws and resolutions.

State law determines how corporate entities are created and how they must operate. Various state agencies may be involved in the oversight of nonprofit corporations:

- The Office of the Secretary of State typically manages the process by which nonprofit corporations are created and maintained
The Office of the Attorney General, or other state office, may also be responsible for general oversight of nonprofits, particularly those that solicit funds.

Once established, most nonprofit corporations exist perpetually and must formally dissolve to cease operations. Incorporating as a nonprofit corporation does not ensure exemption from paying income tax on revenues. That is a matter of tax law (see Practice 2C1).

**BENEFITS OF INCORPORATION**

A group of people can undertake some land conservation efforts without incorporating, but formal incorporation as an independent nonprofit organization provides a land trust with a number of benefits:

- **An organizational identity.** Incorporation gives a land trust a separate existence, independent from the individuals operating it. This status allows a land trust to remain effective over time, as the involvement of specific individuals will inevitably change. It also helps create credibility for a land trust’s activities because it indicates that the organization involves more than just a few concerned citizens.

- **A structure for decision-making.** The corporate structure requires more formal operating rules, which can be important for land trusts facing increasingly difficult decisions as they grow and expand their programs and activities. Again, this structure also gives the organization’s decisions more credibility in the eyes of the community.

- **Limited liability.** One of the most important benefits of incorporation is that it helps shield individual board members, officers and others associated with the land trust from any financial liability resulting from the land trust’s actions or decisions. This protection is particularly important for land trusts owning land or holding conservation easements. In contrast, individuals acting alone or through an unincorporated association may be held personally liable or financially responsible for their actions. See Practice 6E2 for more information about insurance for directors and officers.

- **Prerequisite to federal tax-exempt status.** Incorporation is a prerequisite to obtaining federal (and sometimes state) tax exemption. Without this status, a land trust is unable to accept tax-deductible contributions (see Practice 2C1).

- **Prerequisite to holding a conservation easement.** State laws may vary, but most land trusts must incorporate to hold conservation easements. The Uniform Conservation Easement Act, adopted by 23 jurisdictions, provides that only governmental bodies or charitable
corporations, charitable associations or charitable trusts may hold conservation easements. Federal tax law also requires charitable corporate status for a land trust to be a qualified conservation organization authorized to accept tax-deductible conservation easements. All land trusts must review their own state’s real estate laws related to holding conservation easements to ensure they are properly organized with respect to this issue.

- **Increased donor confidence.** Many individuals, foundations and corporations will only give to incorporated organizations, even when those donors are not intending to take a tax deduction.

**HOW TO INCORPORATE**

Nonprofit incorporation is a matter of state law. Each state has its own unique procedures and criteria governing incorporation. It is essential for a land trust to consult a local lawyer expert in nonprofit organizations as it works through this process.

While specific procedures vary from state to state, the typical process of incorporating under state law includes the following steps:

1. **Find out the specific requirements for incorporating in the appropriate state.** Consult the state’s office of the secretary of state to review instructions, sample forms and resource information on nonprofit incorporation. A list with links to all states’ Secretary of State Office websites can be found here.

2. **Select a name.** Every nonprofit corporation must have a corporate name under which it conducts its business. To avoid confusion, nonprofits — like other businesses — cannot adopt the same name as another organization. States may also have specific requirements for creating a name. For example, in Ohio, the word “trust” cannot be used in a name unless the entity is, in fact, a formal, legal trust. Other states may require a corporation to include the words “corporation,” “incorporated” or similar words or abbreviations in its name. The Office of the Secretary of State can help determine whether the name chosen for the new organization is available; it may refuse to accept articles of incorporation if the land trust’s chosen name is not acceptable. A land trust should check on the availability of a chosen name as early in the process as possible so that documents or other materials do not have to be redrafted if the desired name is not available.
3. **Identify incorporators and a board of directors.** To create a nonprofit corporation, a land trust must have individuals willing to undertake the incorporation process. They will oversee the process of drafting and filing the documents needed to establish the organization, making decisions for the land trust until this process is complete. Once incorporated, a board of directors (also known as “trustees” or “governors” in some states) and appropriate officers will manage the land trust. State law will govern the number of required incorporators, as well as the number of required board members and officers and how they are initially selected. Local counsel should advise a land trust on these details.

4. **Draft and file the corporate charter or articles of incorporation.** The corporate charter (also known as articles of incorporation, certificate of incorporation and articles of agreement) establishes the organizational form of the land trust. The broad purposes and powers of the land trust are stated in the charter. States may require additional information be set forth in the charter, such as: a primary location of business; the establishment of an agent for notice of any action against the land trust; names and addresses of the original incorporators of the land trust; and direction as to how the organization’s assets would be distributed in the event it ceases to operate (dissolution). A land trust that operates in more than one state incorporates in one state only, but may have to qualify as a foreign corporation in the other state(s).

5. **Become familiar with the requirements for state and federal tax-exempt status.** The corporate charter may need to include certain provisions in order to qualify for tax-exempt status.

6. **File with the secretary of state.** A land trust must file its articles of incorporation with the appropriate office of the secretary of state before it can begin officially conducting business. Any later amendments to this corporate charter must also be filed. The articles of incorporation are a matter of public record. This process puts the public on notice that there is a nonprofit entity operating in the state and provides information on how to find the organization. Details on how and when to file are available from the office of the secretary of state. There are filing fees associated with registering as a nonprofit corporation, and amounts vary among states.

7. **Draft and adopt bylaws.** The bylaws outline the basic operating procedures of the land trust. They are primarily an internal document. See Practice 2B2 for more information.
MAINTAINING INCORPORATED STATUS

Once officially incorporated as a nonprofit corporation, a land trust must continue to operate in accordance with state law and provide the state with regular confirmation of its existence and operation. This procedure is referred to as maintaining good standing. If a land trust is not in good standing, it may not be able to continue to conduct business in the state — such as completing conservation easements or other real estate transactions.

STATE AND LOCAL FILINGS

Every state differs in its filing requirements; many closely mirror federal reporting requirements. In many states, for example, public charities must file annual financial reports similar to the federal Form 990 or with copies of the Form 990. A land trust should make a thorough search of filing requirements in its state by contacting the secretary of state, attorney general or other offices with jurisdiction over nonprofit organizations or by contacting an attorney or accountant familiar with the state’s rules.

State reporting and tax requirements may include the following:

- **Information on annual financial activity** (income, expenses, net asset values).
- **State and local sales tax** charged on items the land trust sells to nonexempt parties.
- **Unrelated business income tax** at the state level.
- **State and local property tax on realty and personal property.** Depending on state and locality, a land trust may be responsible for property tax on certain realty and personal property.
- **Excise taxes.** Special taxes may be levied on organizations in connection with gasoline, telephone service, admissions to events and so forth at the federal, state or local level. Nonprofits may or may not be exempt from these taxes.
- **Charitable solicitation registration.** Organizations intending to solicit contributions from the public may be required to register and file annual reports with the state (see Practice 5A1).
Most states (usually through the secretary of state or the state attorney general’s office) will furnish a Certificate of Good Standing to nonprofit organizations that are current on all required state and local filing requirements and against which no complaints are pending. Grant-making entities and other funders will frequently request this certificate in connection with project proposals or funding requests.

For accreditation, a land trust needs to be in good standing with the state in which it is incorporated.
STANDARD 2 COMPLIANCE WITH LAWS

B. Nonprofit Incorporation and Bylaws

2. Operate in accordance with established bylaws.

Accreditation indicator elements located at www.landtrustaccreditation.org

BYLAWS

Bylaws are the internal governing document for a land trust, creating processes and rules by which the organization can act. They define the functions, responsibilities and roles within the organization, setting forth basic structural guidelines for how the board of directors (and members, if appropriate) will make corporate decisions and manage the organization.

Bylaws help to ensure that the decisions of the nonprofit corporation represent general public interests (as opposed to private interests), through provisions that address:

1. The role of organizational members
2. Responsibilities and limitations on the governing board
3. The decision-making process

Provisions addressing the size of the board, meeting quorums and term limits for board members, for example, help prevent decision-making dominated by one or a small group of directors.
State law directs how nonprofit corporations must manage their affairs. Most states require nonprofits to adopt bylaws. State law also governs some of the items contained in bylaws, such as voting rights and processes for dissolution. Many states offer sample bylaws that conform to the state’s requirements. Have an attorney familiar with local law review drafts before adopting or amending bylaws to ensure they align with state law.

Whatever internal processes a land trust creates through its bylaws, it is critically important to follow them. Failing to consistently operate according to bylaws may make decisions invalid or leave them vulnerable to claims of invalidity.

**DRAFTING BYLAWS**

No single approach to bylaws will work for all land trusts. Although all land trust bylaws should address how organizational decisions are made, land trusts may elect to operate differently depending upon their unique circumstances. For example, a newly formed land trust may make all of its decisions through its full board of directors. Over time, it may want to create committees to allow certain matters to be more fully considered in between board meetings and without the need to convene the entire board for preliminary discussion. If it hires staff, the land trust will want the staff to be responsible for some matters that the board had previously handled. And, as staff members gain experience, the board may wish to add to the types of decisions that can be made by staff.

**COMPONENTS**

State law identifies the components required to be included in an organization’s bylaws. A land trust may have options with respect to other topics. Items often covered include (although not necessarily in this order or structure):

- Organization name
- Purposes of the corporation
- Office location and address
- Members, if any, including qualifications and voting rights
- Board of directors (or trustees or governors), including numbers, qualifications, selection and termination process and terms of service
• Board meetings, including required quorum, time and place (including alternative meeting formats, if permitted by law, such as by phone or action without a meeting), notice and voting

• Annual meeting

• Officers, including terms of service and responsibilities

• Committees, if any

• Fiscal policies, including fiscal year and fiscal controls

• Amendment of the bylaws

• Compensation and reimbursement

• Delegation of authority to staff

• Corporate books and records

This list is not exhaustive. Local law and practice, as well as a land trust’s individual preference, may dictate what other issues are addressed. This bylaws checklist discusses these components in more detail.

OTHER DRAFTING CONSIDERATIONS

• Clarity. It is important to draft bylaws clearly. All land trust board members and staff should be able to understand and comply with the provisions of the bylaws.

• Consistency with state law. Bylaws must be consistent with state law. Many states offer sample bylaws that conform to the state’s requirements. Check with the office of the secretary of state, the attorney general’s office or a nonprofit support center for examples.

• Consistency with the corporate charter. Bylaws must also be consistent with the land trust’s own corporate charter (also known as articles of incorporation). State law may dictate what matters must be addressed in the charter and what can be addressed in the bylaws. To include desired terms in bylaws, the corporate charter may also need to be amended.
- **Detail.** Bylaws are drafted with varying degrees of detail; no one approach is correct. Some land trusts prefer a minimal document providing basic structure and allowing the board to deal with many matters in accordance with separately adopted board policy. Other land trusts prefer more specific bylaws that cover a broader range of procedures and situations, allowing the board to refer to only one document in managing its most important issues. Changing detailed bylaws is often a more complicated process than changing board policy and may require legal consultation, membership voting and filing with the appropriate state and other regulatory agencies.

For accreditation, bylaws should contain significant operational provisions to appropriately guide the land trust’s work. A land trust needs to demonstrate that it is operating in accordance with its bylaws.
STANDARD 2 COMPLIANCE WITH LAWS

C. Federal Tax Exemption

1. Maintain status as a tax-exempt organization under section 501(c) (3) of the Internal Revenue Code (IRC)

   B. Do not knowingly engage in prohibited activities such as private inurement or impermissible private benefit

Avoiding Private Inurement and Impermissible Private Benefits

Tax-exempt public charities must always operate exclusively for charitable purposes providing public benefit. As recipients of public charitable funds, tax-exempt organizations are prohibited from disposing of their assets in ways that result in private benefit to an individual person or entity, and especially from benefiting a person who is in a position to influence the organization, such as a board member, employee or agent. A land trust that engages in impermissible private benefit or private inurement risks losing its tax-exempt status; individuals who engage in private inurement may also suffer financial penalties known as intermediate sanctions for excess benefit transactions.

The statutory prohibitions against private inurement and impermissible private benefit ban:

- The payment of excessive compensation for professional services or merchandise
- The disposition or rental of property, other than to another nonprofit or government entity, at less than fair market value
- The provision of services by the land trust to individuals and nonexempt organizations without a fair return
Consequently, land trusts should analyze carefully proposals to:

- Allow free use of office space or provide staff support to a nonexempt organization
- Give away marketable equipment the land trust no longer needs to private individuals, except in circumstances where such activity is mission-related
- Selling land or renting a house on a property the land trust owns at less than fair market value, except in circumstances where such activity is mission-related

PRIVATE INUREMENT = EXCESSIVE PAYMENTS TO INSIDERS

Section 501(c)(3) specifically states that no part of the net earnings of a 501(c)(3) tax-exempt organization may inure to the benefit of any private shareholder or individual. In other words, a tax-exempt organization may not use its assets to benefit any individual or entity that has a close relationship to the organization, such as a director, officer, key employee, major financial contributor or other insider. The rule is intended to guard against misuse of charitable assets for personal gain by those who have the greatest influence within an organization. The prohibition against private inurement is fundamental to maintaining public confidence in charitable organizations.

While the prohibition against private inurement is absolute, it only applies to transactions where there is an excess benefit. That is, private inurement prohibits receipt of a benefit from the organization without giving something of at least equal value in return. Such transactions are tested against a standard of reasonableness that calls for a roughly equal exchange of benefits among the parties and looks to how comparable charitable organizations, acting prudently, conduct their affairs. The most typical example of an excess benefit transaction involves paying excessive compensation to a nonprofit executive.

So, what will happen if the IRS determines a land trust has conferred excessive benefit to an insider? The intermediate sanctions rules, enacted in 1997, empower the IRS to impose an excise tax (a financial sanction) on the excess benefit to insiders who improperly benefit from transactions with a nonprofit. Intermediate sanctions penalties may be imposed on both those who received the benefit (such as senior staff) and those who approved the benefit (such as board members). These penalties on excess benefit transactions are intermediate in the sense that the IRS can still revoke the tax exemption of the 501(c)(3) public charity when it determines such revocation is warranted. Generally, the IRS considers four factors in such a determination:
1. Involvement in repeated excess benefit transactions

2. The size and scope of the excess benefit transactions

3. The nature of any safeguards implemented by the organization to guard against future excess benefit transactions

4. The organization’s compliance with other applicable laws.

The intermediate sanction rules clarify that an organization can establish the reasonableness of a salary, payment or transaction by:

- Having appropriate data to support the reasonableness of the transaction (such as salary data from other similar organizations or evidence of fair market value in a land transaction)

- Making sure the board approves the transaction

- Documenting the basis for the decision in the organization’s records

Note that most transactions that involve private inurement considerations are also conflict of interest transactions under state law. Land trusts should document findings of reasonableness and other determinations of organizational and public interest in connection with such transactions. For more information on managing conflicts of interest and their documentation, see Standard 4.

**PRIVATE BENEFIT RULE**

The doctrine of impermissible private benefit generally prohibits a land trust from using its assets to benefit any individual or entity, not just an insider. Impermissible private benefit occurs when an organization provides more than insignificant or incidental benefit to a private individual or entity.

Some private benefit may be tolerated where it is incidental to the accomplishment of the land trust’s charitable purposes and insiders to the organization are not involved. For example, a land trust may be able to lease property to a farmer at less than what a summer resident might pay if the organization’s exempt purposes include the protection of agricultural land. Or, it may be able to provide conservation services free of charge or below market price in the course of a land protection project, such as developing a land-use plan for a property on which the owner is donating a conservation easement.
An incidental private benefit must be incidental to the public benefit in both a qualitative and quantitative sense. Qualitatively incidental private benefit occurs when the benefit to the public cannot be achieved without some benefit to private individuals. Quantitatively incidental private benefit is insubstantial when viewed in relation to the public benefit conferred by the activity. The amount of private benefit that the courts have allowed has depended on the magnitude of the private benefit in relation to the public benefit derived from the organization’s activities and whether the private benefit is necessary to fulfill the organization’s exempt purpose. Land trusts should consult with experienced legal and other advisers (such as an appraiser) to make the determination and document their due diligence. See Standard 4 for more information on how to make this determination and document the results for specific transactions. A charitable organization that violates the impermissible private benefit prohibition risks the loss of its tax-exempt status.

For accreditation, a land trust must document that it is not knowingly engaging in activities that result in private inurement or impermissible private benefit, such as through transactions with insiders, issuing gift acknowledgements, accepting donations or purchasing land or conservation easements, selling land or easements, enforcing easements or amending easements.

ADDITIONAL RESOURCES

- Private Benefit Cheat Sheet adapted and edited from Andrew C. Dana, Esq., 2012.
- “Questions to Assist in Conducting a Private Benefit Analysis,” adapted from The Nature Conservancy, 2015.
STANDARD 3 BOARD ACCOUNTABILITY

A. Board Responsibility

3. The board hires oversees and evaluates at least annually the performance of any executive director (or chief staff person)

Accreditation indicator elements located at www.landtrustaccreditation.org

INTRODUCTION

In staffed organizations, it is the board’s responsibility to hire, supervise and evaluate, at least annually, the performance of the executive director or chief staff person and to provide guidance and support for the executive’s role and position. The executive director may hire additional staff or recruit program volunteers who work to implement the land trust’s programs and provide ongoing supervision and evaluation of these additional workers.

EVALUATION

Who

In practice, a single board delegee (such as the board president) or a small committee of the board may best accomplish hiring and supervision, including evaluation. This committee then communicates with the board, including making recommendations as appropriate for board action, such as hiring, wage and other work-related decisions. Because board members may have a limited perspective, evaluation may incorporate feedback from those within (or external to) the organization who work most closely with the executive, such as staff, volunteers and funders. A so-called 360 evaluation can be helpful in identifying areas for improvement.
**When**

Typical executive evaluation models use periodic evaluation (annually, semi-annually) to provide feedback to the executive. It is critical that boards provide regular evaluations of executive directors, not just when boards are unhappy with performance. Because the executive director acts both directly and indirectly through others to manage the organization, evaluating the executive director’s performance is intrinsically linked to evaluating the land trust’s performance as a whole. Therefore, many boards incorporate evaluation of the executive director into the annual review of organizational performance and goal setting for the coming year. However, the board does not have to wait until yearend to provide feedback. Regular check-ins can help prevent minor problems from developing into big problems. This type of continuous feedback and evaluation throughout the year is often referred to as a *performance management* model. The HR Council for the Nonprofit Sector in Canada has published more information about how to create and implement such a process. For land trusts with new executive directors, check-ins at three or six months are important to make sure they are starting off on the right foot.

**How**

There are many different ways to conduct a staff evaluation. For example, see the sample survey form from *Blue Avocado* that provides a basic platform for executive evaluation by a board. There are other models which allow for more input by the reviewed employee (the employee completes a self-review that the supervisor reviews). Choose a model that speaks to your organizational culture and be consistent with its application over time. It is also good practice to ask your executive director how they would like to receive feedback.

Feedback is most useful when it is descriptive, not evaluative; specific, rather than general; and directed toward voluntary behavior. For example, rather than tell someone they were “disrespectful,” describe the behavior you interpreted as disrespectful: “When you interrupted me and rolled your eyes, I felt you were not interested in my contribution to the conversation.” Instead of telling someone that she always misses deadlines, point out that the report due last month was three days late and the financials you requested in advance of a meeting were handed to you as you walked into the room. Leaders who do these things well with staff and volunteers will also do them well in other key relationships: relationships with community partners, funders, policymakers and so forth.

Key to a good evaluation is a written job description. Document what you expect of your executive director. Distribute this information to board members and the executive director so everyone will know what to expect. Use the job description as the basis for performance evaluations. The
Learning Center has several examples of job descriptions for land trust staff, including those for executive directors (see also Practice 7E1).

Whatever the process, the evaluation should be documented in writing. Documentation may take the form of an assessment report, signed and dated by the executive and the reviewers. Land trust boards can also document the fact that they conducted the executive evaluation in board meeting minutes, while keeping the actual findings confidential.

For accreditation, a land trust needs to document how and when it evaluated the executive director or chief staff person.

DISSATISFACTION WITH THE EXECUTIVE DIRECTOR

A board may find that they are unsatisfied with their executive director’s performance. In such a case, it is important that the board address the situation and not sweep the matter under the rug, vaguely hoping that things will get better. The first step is for the executive committee of the board to identify where the executive director is falling short. Is the problem significant to the position – something that must be changed for the land trust to be successful or meet its mission? Is it something that can be addressed by training or coaching? In consultation with the executive director, the executive committee should lay out a plan to resolve the problematic behavior. The executive committee or a specially created ad hoc committee should oversee the executive director’s work, providing support as needed. The committee should document the executive director’s steps (or lack thereof) to solve the problem to create a record that can be used in the event of litigation.

The executive committee should also take a hard look at the executive director’s goals to determine whether they are realistic and achievable. It may be that no one, no matter how good, could possibly achieve the goals. In such a case, the executive committee, in cooperation with the executive director, should rework the goals so they are challenging but achievable.

In any case, the board should set a three- or six-month check-in to determine if the executive director is meeting the new goals or has changed their problematic behavior. If the executive director’s performance hasn’t improved, the board should take action. First, the board should consult with its legal counsel to ensure it follows any applicable employment laws. The board may want to offer the executive director the opportunity to resign to avoid the messiness of a termination. Whatever action is taken, the board should document its actions, including any severance pay, in the board minutes.
Of course if the board believes the executive director has committed illegal acts (embezzlement, sexual or other harassment and so forth), the board must take immediate action to investigate and remedy the situation, in consultation with its legal counsel.

**ADDITIONAL RESOURCES**


STANDARD 3 BOARD ACCOUNTABILITY

B. Board Composition and Structure

1. Have a board of sufficient size, skills, backgrounds and experiences to conduct its work effectively

Accreditation indicator elements located at www.landtrustaccreditation.org

INTRODUCTION

The board of directors bears ultimate responsibility for ensuring that a charitable organization is able to pursue its public mission and fulfill its obligations. A land trust’s board needs to be of sufficient size and include persons with the knowledge, skills and experience to provide effective oversight and carry out the organization’s business. For example, a board composed overwhelmingly of real estate attorneys and lacking fundraising skills may be strong in land acquisition but may fall short in obtaining the funding needed for those acquisitions. A board of wealthy donors with no organizational management experts may fail to engage in the big picture thinking needed to take the organization to the next level. A board whose members do not reflect the entire community may find it unwittingly makes decisions that ignore or even hurt entire swaths of the community. A board with members who possess diversity of skills and experiences and reflect the community will be a strong board able to lead its organization in its conservation mission.
ADVANTAGES OF A DIVERSE BOARD

A land trust’s board needs to be of sufficient size and diversity for several reasons:

- **To minimize conflicts of interest.** The size and composition of the land trust’s board can minimize conflicts of interest. Conflicts are more likely to occur with a weak board dominated by one or a small group of individuals who, as full-time officers or employees, have a financial interest in the organization. The board should consist predominantly of individuals who are financially disinterested.

- **To qualify the organization for tax-exempt status.** The Internal Revenue Service looks at the composition of an organization’s board when determining if it qualifies for 501(c)(3) tax-exempt status. The IRS looks for a representative and financially disinterested governing body that reflects a range of public interests, not simply the personal interests of a small number of donors.

- **To provide credibility in the community.** A land trust needs to gain the confidence of a wide range of people in the community: people with the ability to contribute financially to the land trust, landowners, business leaders, the real estate and development community and conservationists, among others. Perhaps the best way to gain this confidence is to have representatives of these groups on the board. The land trust certainly needs to avoid the appearance of being a small group of insiders of any type.

- **To ensure effective operations.** Land trusts, like all nonprofits, need a wide range of expertise represented on their boards to help them operate effectively. Financial, management, fundraising and legal skills are among those needed on a board.

BOARD SIZE

There are no hard and fast rules for the ideal board size. The right size depends on situational factors related to the organization and the community within which it works.

In general, a board should be small enough to act as a deliberative body but large enough to be able to effectively carry out its leadership responsibilities. State law usually specifies a minimum number of board members – most commonly three – but as a practical matter, this is an insufficient number for even minimally active organizations. Having too many directors may also present practical issues. The Panel on the Nonprofit Sector notes, “[a]lthough a larger board may ensure a wide range of perspectives and expertise, a very large board may become unwieldy and end up delegating too much responsibility to an executive committee or permitting a small group of board
members to exercise substantial control.” Land trusts commonly have boards numbering from seven to more than 25 board members; a narrower range of 9 to 15 seems to be a good compromise between efficiency and diversity. For further discussion, see the Independent Sector’s Principles for Good Governance and Ethical Practice, Principle 10.

BOARD SKILLS AND DIVERSITY

Land trusts, like all nonprofits, need a wide range of expertise represented on their boards to help them operate effectively. Financial management, investments, leadership, fundraising, marketing and public relations, governance and advocacy and legal skills are among those needed on a land trust board. Engineers, surveyors, ecologists and professionals who work in the natural sciences may have vital experience, expertise and connections. In addition to professional skills, land trusts may consider demographics, personal qualities and characteristics, and access to networks and stakeholder communities when recruiting new directors.

As part of a land trust’s obligation to serve the broad public interest, boards should be encouraged to be inclusive of and sensitive to diverse backgrounds and to respect the culture of the communities they serve when recruiting their leadership. By reflecting the constituencies it serves, a diverse board of directors better connects to those constituencies. A more diverse board captures a broader set of experiences that leads to more thoughtful, creative and expansive decisions. It increases the potential for grassroots community support and increases community legitimacy. For more on board recruitment, see Practice 3B3.

For accreditation, a land trust must demonstrate that its board is of sufficient size and composition (skills, background and experience) to conduct the organization’s work effectively.
STANDARD 3 BOARD ACCOUNTABILITY

B. Board Composition and Structure

3. Have a board development process that includes procedures for recruiting and training board members

Accreditation indicator elements located at www.landtrustaccreditation.org

INTRODUCTION

A strong board is key to a land trust’s success. A land trust’s board needs to be of sufficient size and include persons with the knowledge, skills and experience to provide effective oversight and carry out the organization’s business. Ongoing recruitment of new members is critical to maintaining the needed size and diversity and, ultimately, the strength of the board. A land trust can help ensure recruitment of good board members by investing in an analysis of the skills and backgrounds represented on the board and identifying unmet needs that new board members can fill. These needs can then drive board recruitment, and both existing and prospective board members will have a better understanding of the positions to be filled. Standardized board recruitment methods are helpful in focusing attention on the importance and enduring nature of this task and establishing structure within a necessarily interpersonal process. Where board members are lacking skills, a land trust should ensure they gain them by providing access to training and education opportunities. In addition, a land trust should make provisions for ongoing or in-service training to allow board members to keeps skills and knowledge current as the land trust’s needs change and as the land conservation field evolves.
BOARD DEVELOPMENT PROCESS

While attending to board composition and structure is ultimately the responsibility of the full board, the work associated with this function may typically be delegated to a committee, such as a nominating or governance committee, with support from staff or key volunteers.

A land trust’s board development process should include procedures for recruiting and for training board members in the basics of organizational oversight and land conservation.

SKILLS AND NEEDS ANALYSIS

When an organization is actively recruiting board members, it needs to be strategic and proactive in identifying the right people to fit its needs. A land trust can identify its needs using a profile grid that defines the skills, connections and demographics it would like to have represented on the board. When it applies these criteria to its existing board members, gaps emerge that can serve as recruiting profile priorities. For example, a land trust may find that it lacks someone with knowledge of financial management or with connections to government agencies or who is a creative problem-solver. The more specific a land trust is about its needs, the more successful it will be in finding the right person to fill the vacancy. Be careful to not confuse skills, connections and demographics with what the new board member will do. Be specific about your expectations before a prospect candidate joins the board.

RECRUITING

A land trust can reduce the risk of inactive board members by recruiting people who believe in the mission of the organization and who are willing to assume responsibility for its oversight – and by making specific responsibilities clear before the person agrees to serve.

A recruitment process should include sufficient dialogue and information sharing among members of the land trust and the prospective board member so that both have a clear understanding of the expected contribution of time and personal resources. If the land trust is recruiting someone because of their specific skill set, network access or professional resource, the board should be upfront in letting the prospect know its expectations.
A land trust can help ensure recruitment of good board members by taking the following steps:

- **Formalize recruitment steps.** The nominating committee or other group or person responsible for recruitment should follow a set process of identifying potential board members and reaching out to assess interest in board service.

Some land trusts ask prospective board members to complete an application form, such as this one from E.L. Rose Conservancy (PA), which is then shared and discussed as part of the recruiting process. It is common for prospects to share a resume and to meet with members of the board to explore opportunities for board service.

The committee may wish to survey current board members regarding their personal experience with interested candidates prior to meeting the candidate. Standard interview questions can help focus the conversation on the organization’s work, needs and expectations of the prospect.

- **Develop a written job description or set of expectations for board members so everyone knows what is expected.** These documents will vary depending on the land trust’s situation and operating style, but will incorporate concepts of fiduciary obligation and the duties of care, loyalty and obedience. Some land trusts may wish to make explicit expectations for committee service, meeting attendance, participation in fundraising and financial contributions. The potential board member should be aware of the expected term of service and be given a reasonable, informed chance to evaluate their ability to commit to and maintain the expected level of performance. For additional discussion and examples of written board expectations, see Practice 3C1.

- **Electing or appointing the new board member.** A land trust typically outlines its procedures for election or appointment of board members in its bylaws. Newly elected board members may be invited to join board meetings immediately following their election; recommended best practices call for orientation and training as soon as possible so that the new member may begin serving.
• *When recruitment does not work out.* As part of its process, a land trust may wish to establish alternative ways for key individuals to participate, such as on an advisory committee or task force, or holding an honorary position. Such structures and opportunities can accommodate individuals whose participation would benefit the land trust, but who cannot commit to the level of involvement necessary for a good board member or who otherwise would not make a good fit on the current board. The land trust should consider, however, that advisory committees without any purpose often flounder and it should be sure not to alienate important people by delegating them to meaningless roles.

**WHERE TO FIND NEW BOARD MEMBERS**

One of the most common issues boards face is finding new members, in particular people from different backgrounds from current board members. The common impulse is to reach out to people one already knows to join a land trust board. However, that approach is limiting because one tends to have friends who are similar to themselves. Instead, look at the different groups who are active in the land trust’s community and start showing up to *their* events and *their* public meetings. Learn what their members are concerned about and figure out where there is overlap or alignment with the land trust. That way when the land trust asks them to join the board, it is coming from a place of authenticity.

If a land trust is interested in cultivating a younger demographic, meet them where they are. And where they are is online, so spend time and resources to make the land trust website attractive and easy to use. Also, don’t forget to use the social media outlets at the land trust’s disposal. For example, a land trust could post notes or an engaging video recording on Facebook, Instagram, Twitter or on its webpage. In addition, nonprofits can post volunteer opportunities on LinkedIn and idealist.org.

**ORIENTATION AND TRAINING**

Recruiting is the first step in the board development process; *orienting* prospective and new board members is an essential second step. Orientation is an investment made by an organization to provide the information that makes a board member successful and engaged right away.
Successful orientation begins by providing prospects with the expectations of board service, as outlined above. A board member agreement or letter confirming board responsibilities can define more specifically the board member’s individual interests and what they hope to get back from their board service.

Following election or appointment to the board, it is helpful to provide more extensive written information about the organization, such as a board manual that includes governing documents and board policies, information about the land trust’s programs and calendar, protected properties, financial information, board and personnel contacts and so on.

In addition to a board manual, packet, online “drop box” or other set of information, a special meeting or conversation to orient one or more new board members is an opportunity to provide context, additional detail, to deliver information in a second format and to answer new members’ questions. An orientation meeting also provides for further exploration of the new members’ interests and how they may apply their skills, experience and volunteer time to the land trust’s work.

An orientation meeting should include a review of maps showing the organization’s conservation priorities and lands held in fee or under conservation easement. Orientation may also include a tour of critical properties.

Some land trusts assign mentors to new board members from among their current board. In this role, a veteran board member is available to answer questions and address any concerns the new board member may have. Some of the most successful mentor relationships are between board members who didn’t know each other previously; bringing together strangers not only overcomes some informalities that may come with familiarity, but also builds another relationship that will strengthen the board overall.

**TRAINING**

The information provided to new board members during orientation prepares them to begin serving, but all board members benefit from ongoing training. Investment in board training, including presentations, tours and workshops, pays for itself many times over in greater service, greater commitment and support that is more generous. A land trust should develop an overall strategy for board training that includes workshop opportunities outside of the organization (such as regional or state land trust conferences or the National Land Conservation Conference: Rally), inside the organization (such as a training for all board members on how to read financial statements) and individual training and development opportunities (such as participation in
webinars, community workshops and networks of nonprofit organizations). As members of the Land Trust Alliance, board members also have access to a wealth of information, sample documents and other resources on the Alliance online Learning Center. Included on the Learning Center is an Ask the Expert online forum where board members can have their questions answered by leaders in the land trust community and engage with fellow board members across the country.

A board member, committee or staff person might solicit ideas from board members or through a board evaluation and synthesize this list into a set of three or four training opportunities each year. The frequency and duration of training sessions depends on the group’s needs, board member availability and commitment to professional development.

Training programs should include specific information about conservation priorities and issues facing the land trust. Board and staff members usually have their fingers on the pulse of conservation issues throughout their community. Bringing those issues into the boardroom and helping board members see and understand the questions about stewardship challenges, conservation priorities and educational events, leads to better decision-making. It also provides a connection to the conservation agenda that makes a board feel more connected to the work of the organization.

For accreditation, a land trust needs to document its board recruitment procedures and that it provides training to new board members.
STANDARD 3 BOARD ACCOUNTABILITY

C. Board Governance

1. The board meets a minimum of three times per year and maintains adopted minutes of each meeting.

Accreditation indicator elements located at www.landtrustaccreditation.org

BOARD MEETINGS

Board meetings are the primary means by which the board governs organizational activities. Regular meetings allow the board to review a land trust’s financial situation, assess its programs and ensure activities align with the strategic plan, vision and mission. Boards need to meet to involve all board members and prevent domination of the organization by a single person or small group. As a practical matter, engaging in robust discussion of diverse perspectives leads to better decision-making.

MEETING FREQUENCY

The board must meet often enough so that board members may meet their fiduciary responsibility to stay informed and actively engage in governance – their legal duty of care. Meetings should be held with a frequency appropriate for the land trust’s scope and level of activity. What is appropriate will vary depending on organizational specifics. For example, newly formed land trusts may need to meet more frequently to establish structure and keep a close eye on how planned activities are implemented. Organizations with few or no staff, or without board committees, may meet more frequently to manage operations. At a minimum, the full governing board of a land trust should meet at least three times per year, and the meetings should be evenly spaced.
Attendance and action by a board majority is imperative for nonprofit governance. The land trust can make it easier for board members to participate by scheduling meetings well in advance at convenient times and locations that are easily accessible, holding well-planned and well-run meetings, delegating complex or time-consuming responsibilities to committees and using consent agendas to keep meetings efficient. Board members should attend nearly all meetings of the full board and of the committees to which they are appointed. A board member who cannot attend a meeting should take steps to stay informed by reviewing minutes and meeting materials, making inquiries to find out more about the subject and what transpired in the meeting and, if applicable, filing objections to board actions taken during the meeting.

For accreditation, the board must meet at least three times per year.

MEETING LENGTH

The length of a meeting varies. Meeting frequency is connected to meeting length. If a land trust meets every month, it may benefit by limiting its meetings to two hours. If meetings can’t cover all the business in two hours, the land trust may want to:

- Limit discussion to input and action items
- Tighten deliberations
- Ask staff and committees to prepare better

If an organization uses its meeting time effectively, it may be able to limit the business portion of the meeting to two hours and incorporate additional training, orientation, team-building and other investments in board effectiveness into the agenda.

VIRTUAL ATTENDANCE

Practices and policies that encourage board participation and take advantage of modern communication methods may make it easier for busy people to engage in collective decision-making. Telephone and video-conferencing enable participation without physical presence at meetings. Given improving technology, the time and expense involved in traveling to meetings and the opportunity for increased meeting attendance, some boards may choose to conduct their business through phone or video conferencing. If state law allows such alternative meeting methods, the organization’s bylaws should specify the types of communications that will allow for directors to be considered present for meetings. The key aspect for successful meetings is that the
technology permits all in attendance to hear and be heard by all other participants. See, for example, the relevant provisions for meeting via conference call set forth in the bylaws of the Maine Coast Heritage Trust. Where statutorily permitted and allowed through an organization’s bylaws, email voting as a means of establishing consent can also facilitate board action when face-to-face meetings are not feasible and full participation is desired.

**MINUTES**

Minutes are written accounts of what transpires at meetings; they provide a permanent record of the board’s actions and major deliberations. Minutes provide documentation for addressing future questions or challenges about how the land trust reached a particular decision. In the rare event of a lawsuit, the pertinent minutes can verify that the board’s actions were prudent and reasonable (assuming, of course, that they were).

It is typically the responsibility of the board’s secretary to take minutes or to ensure that a delegated person completes this task. Draft minutes should be reviewed and then approved or accepted by the board in the form of a vote taken in a subsequent meeting. Minutes must also be kept of committee meetings if committees have been entrusted with some of the responsibilities of the board. All approved meeting minutes should be permanently retained with the organization’s corporate records and in accordance with its written records policy (see Practice 9G).

**Minutes should include:**

1. Identification of the type, location, date and time of the meeting.

2. List of attendees, including members of the board, staff and guests, and whether board members are attending in person or virtually and via what method of virtual participation (phone, video conference and so forth).

3. List of materials distributed prior to and at the meeting. These materials may be incorporated by reference into the minutes and should be retained with the minutes or be easily locatable within the land trust’s permanent files.

4. A brief description of items discussed at the meeting, action items identified within discussion and the result of any votes taken.
5. Votes should be recorded, along with a motion or resolution clearly stating the action or item to be voted. The minutes should reflect that a motion or resolution was proposed, seconded, discussed and then voted, with notations indicating if the vote was unanimous or, if not, the number of dissents or abstentions. It is not necessary to provide the names of those who propose or second, or who vote and in what way; however, some organizations operate by this practice to further clarify the record of proceedings. The minutes should also reflect that any conflicted parties are physically absent for discussion and voting (see Practice 4A2).

For accreditation, a land trust needs to ensure that its meeting minutes sufficiently document board discussion and action and that it adopts its meeting minutes. Minutes can be used by a land trust to demonstrate how the board provides oversight of its operations.
STANDARD 3 BOARD ACCOUNTABILITY

C. Board Governance

3. Provide board members with sufficient and timely informational materials prior to each meeting to make informed decisions.

Accreditation indicator elements located at www.landtrustaccreditation.org

IMPORTANCE OF SUFFICIENT AND TIMELY INFORMATION

To make informed and responsible decisions, the board must be knowledgeable about the land trust’s activities. The duty of care (see Practice 3A) requires each board member to be an active, informed participant in the management of the land trust. Members of the board must be familiar with the facts and circumstances of the business to be discussed and voted on at meetings. Lack of accurate, sufficient information can cause a number of problems for the land trust:

- **Decision-making can become unpredictable, tedious and frustrating.** This can lead to strained relations among board, staff and committees.

- **Politics and personalities may rule over sound practices.** There is more room to persuade through emotion or bullying if the facts are not available.

- **The board may fail to fulfill its legal duty of care** to conduct reasonable inquiry and make prudent decisions that further the organization’s mission and the public benefit.
To ensure board members are prepared to make good decisions, it is customary to send an agenda and background materials in advance so directors may prepare. A well-developed agenda embodies successful preparation. The agenda should include information about the topics to be discussed, the time allotted for each item and who will lead the discussion. In addition, a good agenda references any supporting materials and the purpose of each agenda item. One way to highlight the purpose of an item is to state specifically whether the item to be discussed is:

- For information
- For input, with a decision to be made later
- For action, with a decision to be made at this time

Best practices suggest sending materials at least three days prior to the meeting to provide sufficient time for review.

In the event that background materials are not available for dissemination three days prior to the meeting and especially on the occasion that materials are distributed during the meeting itself, it is prudent to allow time within the meeting for board members to fully review and consider the new information. This review period should be documented in the minutes. After allowing time, the board can determine whether it is sufficiently informed to discuss and vote on the matter or if the matter should be tabled.

For accreditation, a land trust must provide the board with materials several days before a meeting, sufficient for the board to make informed decisions and provide adequate oversight of operations. In general, materials include an agenda, minutes of the previous meeting and informational materials on most decision items on the agenda, such as financial reports. Prior to decision-making meetings on land or easement projects, the land trusts needs to provide materials to the board in advance describing the project (such as project location, project size, analysis of how the project meets the project selection criteria, number/type of reserved rights retained and so forth).
STANDARD 4. CONFLICTS OF INTEREST

A. Dealing with Conflicts of Interest

1. Adopt a written conflict of interest policy that addresses, for all insiders, how conflicts are identified and avoided or managed

Accreditation indicator elements located at www.landtrustaccreditation.org

OVERVIEW

Conflicts of interest arise when certain persons, often called *insiders*, are in a position to benefit from an organization’s actions because of their relationship with the organization. The existence of a conflict of interest does not mean that the insiders have unsavory motives or that they will in fact benefit from their association with the organization. Avoiding conflicts of interest altogether can be difficult and, in many situations involving conflicts, the proposed transaction holds potential benefit for the organization.

The existence of a conflict of interest does not mean that the transaction must be abandoned in all cases, but it does mean that there is an opportunity for undue influence on the organization’s decision-making. This

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Definition of Insiders

Board and staff members, substantial contributors, parties related to the above, those who have an ability to influence decisions of the organization, and those with access to information not available to the general public. The IRS generally considers “insiders” or disqualified persons under IRC §4958 to be persons who, at any time during the five-year period ending on the date of the transaction in question, were in a position to exercise substantial influence over the affairs of the organization. “Insiders” generally include: board members, key staff, substantial contributors [see IRC §507(d)(2)], parties related to the above and 35 percent controlled entities. While these are strict definitions within the tax code, land trusts are advised to take an even more proactive approach to the potential damage that conflicts of interest may cause an organization and also include in the definition of “insiders” all staff members and those with access to information not available to the general public (such as certain volunteers). Related parties is defined by the IRS to include spouse, brothers and sisters, spouses of brothers and sisters, ancestors, children, grandchildren, great-grandchildren, and spouses, grandchildren and great-grandchildren.
requires attention and careful management, so that there may be no question about the organization’s decision and that it benefits the general public, as opposed to private individuals.

Improper management of a conflict of interest can result in violation of federal prohibitions against private inurement, and of state law, leading to loss of tax-exempt status or legal claims against the land trust, loss of credibility in the community and distrust and decaying morale among the board and staff.

The best way to address conflicts of interest is to make board members and others aware of how conflicts may arise and what can be done to avoid undue influence. The IRS recommends that all nonprofits have a conflict of interest policy to guide management of conflicts. A policy should identify who is covered by the policy, the types of conduct that raise concerns (such as a financial interest in a transaction, personal relationships that might unduly influence a land transaction or land management decision or being on the governing body of a partnering organization) and specify how conflicts should be disclosed and avoided or managed. Each board and staff member should have a copy of the policy. In implementing the policy, land trusts should document their management of conflicts, including determinations related to private inurement. See Practice 2C1b for more information on private inurement.

**WHAT IS A CONFLICT OF INTEREST?**

A conflict of interest arises when a person in a position of influence in an organization has the potential to benefit (or create a benefit to a family member or organization with which they are associated) from the organization’s actions. There is a conflict of interest when an insider could benefit financially from a transaction, as in the case where a board member’s spouse proposes to provide contractual services to the land trust. But, conflicts of interest may also relate to personal interests as well. Directors, staff, and other insiders may have loyalties to persons or other organizations that could drive their opinions and actions on land trust business, as in the case where a board member is also a public official or a staff member who serves on the board of another conservation organization (see narrative for Practice 3A1).
CONFLICT OF INTEREST POLICIES

All nonprofit organizations should develop a written policy for dealing with conflicts of interest. The IRS includes a sample conflicts policy in its instructions for applicants for tax-exempt status (1023). Handling conflicts consistently and thoroughly on an ad hoc basis can be extremely difficult. It may make decisions seem personal to the insider in question and either inhibit a frank exchange of views among board members or alienate them. It leaves open the possibility that the land trust will not adequately deal with a potential conflict, which could result in legal action and leave the land trust open to public criticism. While the board can approach the management of conflicts on a case-by-case basis, it needs clear guidance on conflicts management that can be understood by all board members.

A conflict of interest policy can be relatively simple and straightforward and need not be a burden on the land trust’s operations. The policy should at a minimum reflect the standards of state law and should be reviewed by legal counsel to be sure the policy meets all applicable legal requirements. A conflict of interest policy should include the following standard elements:

- A description of who is covered by the policy. This section is typically a definition of insiders or interested parties. The IRS, under Internal Revenue Code §4958, generally considers insiders or disqualified persons to be persons who, at any time during the five-year period ending on the date of the transaction in question, were in a position to exercise substantial influence over the affairs of the organization. Insiders generally include:
  - Board members
  - Key staff
  - Substantial contributors [see IRC §507(d)(2)]
  - Parties related to the above
  - 35-percent controlled entities.

Section 507(d)(2) defines a substantial contributor as a person whose aggregate contributions exceed 2 percent of all contributions received by the organization since inception, but only if such total is more than $5,000. However, per IRC §4948(f), which defines disqualified persons, for purposes of analyzing the relevant facts and circumstances to determine whether there is an excess benefit, the lookback period for a substantial contributor is five years.
Related parties is defined by the IRS to include spouse, brothers and sisters, spouses of brothers and sisters, ancestors, children, grandchildren, great-grandchildren and spouses of children, grandchildren and great-grandchildren.

While these are strict definitions within the tax code, land trusts are advised to take an even more proactive approach to the potential damage that conflicts of interest may cause an organization and also include in the definition of insiders:

- All staff members
- Those who have an ability to influence decisions of the organization (such as committee members)
- Those with access to information not available to the general public (such as certain volunteers, contractors, consultants, advisory board members)

**Disclosure requirement.** The policy should require disclosure of any conflicts to the land trust’s decision-making body. Most often, disclosure will come from the conflicted insider, but if an insider fails to disclose a conflict, most conflict policies require others with fiduciary duty to the organization (such as board members) to make the conflict known.

**Requirement of recusal from discussion and decision-making.** Recusal means that the conflicted person withdraws from participating in the consideration of and voting on the transaction. In most cases, this will happen within the context of a board meeting, where the conflicted insider is a board member. However, all insiders – not just board members – must refrain from participating in or trying to influence discussions and decisions in matters in which they have a conflict.

Recusal requires physical exclusion from the place in which the discussion and decision-making takes place to guard against nonverbal influence. Conflicted parties must recuse each time the proposed transaction is discussed until a decision is reached. In limited circumstances, the conflicted party may be present to provide information or clarify questions about the transaction, but must leave after providing the information, before deliberation begins.

**Guidance for management of conflicts.** Following recusal of conflicted parties, the land trust’s leadership must consider whether a decision can be made that derives solely from the interests of the organization and what further steps may be necessary. Guidance within the policy may address the following considerations:
Finding of best interests. A specific, documented determination that the proposed transaction serves the best interests of the land trust can be helpful in focusing the discussion and decision.

Fairness to the land trust. Any decision should be fair to the land trust and not offer the insider an advantage due to their position in relation to the organization. Procedures ensuring fairness range from formal competitive bidding on major contracts to comparison-shopping by obtaining informal price quotations for common goods and services (also known as **benchmarking**). These procedures guard against private inurement (see **Practice 2C1b**). Consider adopting the standard in **California law**, which requires a finding by the board that a more advantageous arrangement could not have been obtained with reasonable effort under the circumstances.

Arms-length transactions. Negotiations to determine the specifics of the transaction should be conducted pursuant to the land trust’s customary business practices, as if the insider had no history with the organization and as the land trust would proceed with a non-conflicted party. For example, if considering contracting with an insider for professional services, the land trust should make sure to follow all of its usual procedures for hiring contractors (such as reference checks, policies on payment, documentation of insurance and so forth). For land and conservation easement transactions, the land trust should follow all its transaction policies and procedures, such as ensuring the project meets the land trust’s selection criteria. Negotiations on the land trust’s part should also be made only by non-interested parties – for example, a land trust considering a land transaction with a board member’s parent should assign someone other than the board member to handle communications.

No private inurement. Conflict policies usually make explicit reference to the prohibition against private inurement for tax-exempt organizations. See **Practice 2C1b**.

- **Requirement that the organization document conflicts and their management.** The policy should require that disclosed conflicts be recorded in writing and that all steps taken to manage the conflict also be documented, such as the insider not being present for the discussion and vote.

- **Explanation and enforcement of the policy.** The land trust’s policies on conflicts of interest should be explained to the board and other insiders, as should the expectation of full disclosure and recusal. It is a good practice to have every board and staff member sign the policy or another document that attests that they have received the policy, understand it and promise to comply with its terms. Some organizations also have a standard process of annual notification.
or affirmations, which provide the opportunity for disclosure. This annual rite helps remind board members, staff and other insiders of the policy and their responsibilities under it.

- **Responsibility for adherence to and compliance with the policy.** Responsibility for compliance with the policy is ultimately the responsibility of the board. Some organizations delegate the work of documenting conflicts management, periodically reviewing compliance with the policy, and policy review to a governance committee or other group within the board.

  For accreditation, the policy must apply to board members, staff (if any), substantial contributors, parties related to board members, staff and substantial contributors, those who have the ability to influence the decision of the land trust and those with access to information not available to the general public. The policy must also address how a land trust identifies and avoids or manages conflicts.

**ADDITIONAL RESOURCES**

- Conflict of Interest Policy Template, Sample 1
- Conflict of Interest Policy Template, Sample 2
STANDARD 4 CONFLICTS OF INTEREST

A. Dealing with Conflicts of Interest

2. Document the disclosure and management of actual and potential conflicts

Accreditation indicator elements located at www.landtrustaccreditation.org

DOCUMENTING THE DISCLOSURE AND MANAGEMENT OF CONFLICTS

A land trust should document the disclosure of a conflict and the actions it takes to manage it to provide a clear historical record of the transaction and all efforts made to remove undue influence from decision-making. Official documentation should reflect the existence of the conflict and include the name(s) of conflicted individuals, timing of recusals, considerations and determinations of fairness and actions taken, including voting.

Some land trusts identify the existence of potential conflicts by asking insiders to affirm the policy and disclose at the outset of each year any affiliations that they believe might result in a conflict of interest related to the organization’s business (see, for example, disclosure form from the Kansas Land Trust). These affirmation statements have the advantage of reminding the board of its conflicts policy and procedures and how these might relate to them personally. However, completion of the annual form does not replace the need for an insider to disclose a conflict at the time it arises, and recuse themselves from discussion and vote. Neither will completion of the form suffice to fulfill the board’s duty to document a conflict and its management during consideration of the conflicted transaction.
Documentation of conflict management can be made through board meeting minutes. When the conflicted party is a board member or staff member, the minutes for all meetings where the issue is discussed should include a statement that the board member (or staff member, if present) disclosed and physically recused themselves from the board meeting during the discussion and vote.

In other situations, such as where the land trust needs to document the absence of private inurement, a memorandum or other documentation may be preferable to fully describe the conflict and the board’s management and conclusions. For instance, a transaction involving a contract for professional services with a director’s spouse may require not only documentation of recusal in the minutes, but supporting documentation showing benchmarking and other analysis of the services’ fair market value, as well as logistical considerations of supervision, management and evaluation of the proposed services. In this case, a memorandum, the contractor’s proposal, comparison proposals from other professionals and proposed contract provisions might be needed to fully document the conflict management.

Similarly, for land and easement transactions with insiders, a land trust should follow its standard transaction policies and procedures, for example, documenting that the project meets the land trust’s selection criteria, obtaining formal committee review and approval and securing the appropriate stewardship contribution. For more information, see Practice 4C.

Some land trusts use a practice of asking if there is a conflict of interest before every board vote and then document the absence of conflicts within the meeting minutes. In a similar approach, the Central Valley Farmland Trust (CA) uses a board certification, attesting that no directors or staff have a conflict in connection with a given real estate transaction.

For information on developing a conflict of interest policy, see Practice 4A1. Practice 4A3 addresses transactions with insiders in more specific terms.

For accreditation, meeting minutes or other records must document that the conflicted party is absent for the vote. A land trust must document that it appropriately manages transactions (financial or land/conservation easement projects) with insiders so they do not result in private inurement.
STANDARD 9 ENSURING SOUND TRANSACTIONS

G. Recordkeeping

▲ 1. Adopt a written records policy that governs how and when organization and transaction records are created, collected, retained, stored and destroyed

Accreditation indicator elements located at www.landtrustaccreditation.org

INTRODUCTION

Creating and managing records and files is central to land trust work. Land trusts need accurate and easily retrievable records to meet legal and contractual obligations, track and evaluate activities and be prepared to defend their property interests through enforcement and litigation. In the event of litigation, land trust records and the land trust’s ability to locate supportive records and document their authenticity could be paramount. A well-designed and well-implemented records management system can help.

When information is fresh in mind, it is hard to think about methodically recording it for the future. A wise land trust, however, will plan for its future by adopting appropriate board policies, creating detailed procedures to implement those policies and assigning personnel to make sure the policies and procedures are followed.

WHY MAINTAIN RECORDS?

Keeping orderly and complete records is good, common sense. The amount of information a land trust must manage and recollect grows larger each year, and land trust work requires solid recordkeeping. For example, appropriate stewardship and management of conservation properties rely on good recordkeeping to demonstrate property conditions over the course of time. In addition, contractual agreements and grant programs may require land trusts to keep certain
records and reports to demonstrate their compliance and substantiate grant awards. Recordkeeping also helps with program evaluation, especially in the face of changing personnel and as an organization’s activity increases. Finally, there are three legal reasons a land trust must keep good records:

1. **Sarbanes-Oxley Act of 2002.** In 2002, Congress passed the *Sarbanes-Oxley Act* in response to scandals and economic catastrophes caused by certain organizations’ financial misdoings and accounting inaccuracies.

The regulations in Sarbanes-Oxley focus on corporate accountability, integrity of corporate financial records and transparency of corporate financial matters. Most of its provisions do not directly apply to nonprofit organizations. Nonprofits, however, are subject to the Act’s expanded criminal obstruction of justice penalties for:

- The intentional destruction of records related to federal investigations, and
- Retaliation against those who discover document destruction. The law also suggests that intentional document destruction should be a process that the land trust monitors, justifies and carefully administers. A records management policy can be critical to providing credibility for a land trust should its destruction of documents ever be questioned.

2. **IRS public disclosure requirements.** All public charities are required to make information available for public inspection and to provide copies on site or by mail upon request. This information includes:

- A copy of the application for tax exemption (Form 1023/1023-EZ)
- A copy of any supporting materials and IRS response to the tax-exempt application
- Copies of the three most recent annual federal tax information returns (Form 990/990-EZ/990-N)

Names and addresses of contributors to the organization provided within the return may be omitted from disclosed materials.

Many land trusts meet the IRS disclosure requirements by posting their Form 990/990-EZ/990-N on a public website such as GuideStar, a national database of nonprofit organizations, or on their own websites. **IRS publication 4221, Compliance Guide for 501(c)(3) Public Charities** provides an excellent overview of the variety of recordkeeping requirements applicable to these organizations.
3. **Protection of an organization’s interests in the event of litigation.** Records provide evidence of property interests, property conditions and demonstrate encroachment and violations. Legal defense and litigation are highly fact-driven, and the protection of conservation interests will depend on the documentary evidence available to support a claim. Be aware that the method and regularity of recordkeeping are critical to documents’ admissibility and credibility as evidence, as further discussed below.

In addition to protecting conservation properties, records also protect a land trust in the event of disagreements over contracts. State law (statute of frauds) typically requires certain agreements to be in writing if they are to be enforceable in a court of law. Most contracts or agreements involving land or ones that cannot be completed within one year must be in writing to be enforceable.

**WHY HAVE A WRITTEN POLICY?**

A records policy and related procedures can assist a land trust in a number of ways:

- **Organizational consistency and continuity.** A records policy will provide consistency for the land trust over time, no matter who is working with the data and records. This issue becomes increasingly important as a land trust grows and adds or changes personnel, whether volunteers or paid staff.

- **Efficiency.** Hours, if not days, can be wasted looking for information kept but not organized. A well-designed and implemented recordkeeping system can change that.

- **Admissibility of evidence in judicial proceedings.** Evidentiary law is built upon personal knowledge of a person testifying to a fact. Courts consider personal testimony the most credible because it gives all parties to any litigation an opportunity to ask appropriate questions. However, those with personal knowledge are not always available to testify when needed or may simply not remember critical facts. For example, a land trust representative who initially negotiates and completes a conservation easement no doubt personally knows the condition of the protected land and the reasons the land trust accepted the easement. But as time goes on, that person may no longer work at the land trust or even live in the area. If that easement is violated years later, how then will the land trust prove the original condition of the property?
Land trusts, like all businesses today, rely upon their records rather than personal knowledge or memories to manage important information. Courts have created a number of exceptions to the requirement of personal knowledge. They allow into evidence those records that are likely to be accurate and trustworthy while still allowing litigants to challenge the veracity of those records.

- **Business Records Exception.** The business records rule allows a record to be included in evidence in a judicial proceeding under the following conditions:
  - The record was created at or near the time (rather than later in anticipation of litigation)
  - The record was created by someone with direct knowledge — or who was given the information by someone knowledgeable
  - The record was created and kept in the course of *regularly conducted* business
  - It is the *regular practice* of the organization to create or maintain such records

Establishing and following formal records policies and procedures will enhance a land trust’s ability to rely on the business records rule.

**RECORDS CREDIBILITY**

The principles discussed above relate primarily to the *admissibility* of documents and records into evidence, not to the *credibility* or *reliability* of those documents or records. Credibility, like admissibility, can be influenced by a land trust’s recordkeeping policies and practices. Records created, managed and stored in a manner that is routine and protects against accidental or intentional alteration or loss are typically viewed as more credible.
A CAUTIONARY NOTE: A VIEW OF LAND TRUST RECORDS AND RECORDS POLICIES FROM THE OTHER SIDE

When a land trust is involved in litigation, the opposing parties will also have access to the land trust’s files. As a result, land trusts should consider how their files might be used against them:

- A clever note written on the margin of an internal memo may look simply foolish later
- An unsubstantiated opinion of a volunteer monitor on a monitoring report may cause credibility problems if it is later contradicted by staff
- Multiple records on the same topic may be confusing or contradictory

Some attorneys caution a land trust to keep only those documents and records that are absolutely essential — rather than keeping as much information as possible in case it might be useful. Similarly, land trusts should construct policies and procedures with an eye toward the organization’s ability to implement them. Policies and procedures that are adopted but not followed may be used as evidence that the land trust is not a credible organization.

WHAT CONSTITUTES A RECORD?

The first step in setting up a records policy is determining what constitutes a record. Land trust records may include information or data in any storable, retrievable format, such as:

- Documents, letters, memoranda, reports and handwritten notes, whether the original documents or copies, final versions of materials or interim drafts
- Photographs, including prints, negatives or digital files
- GIS data
- E-mails, both sent and received
- Voicemail and other audio recordings
- Compilations of data stored in databases, spreadsheets and software programs

Although all of these are records, they should not all be treated the same way. Those records most critical to a land trust’s business should be handled with the greatest care.
CATEGORIES OF LAND TRUST RECORDS

All land trusts must keep a wide variety of records relevant to their many areas of practice. For example, every land trust should maintain:

- **Organizational (corporate) records.** These records include articles of incorporation and any amendments and bylaws (current and past), IRS public disclosure records, state charitable organization and nonprofit corporation records and reports, insurance policies

- **Board records.** These records include board minutes, resolutions and other records of corporate action, meeting notices and materials, lists of board members and officers (current and past), board policies and procedures, membership lists for organizations with voting members, delegations of authority to staff and others

- **Financial records.** These records include the general ledger, annual budget, periodic reports, including profit and loss and balance sheet, investment reports, restricted fund reports, cash flow analyses or any other reports needed to track income and expenses properly during the year, audits, tax filings, bank, investment and credit card statements, invoices, disbursements, income and deposits

- **Fundraising and donor records.** These records include donor substantiation, grant applications, awards and reports

- **Employment and personnel records.** These records include documents related to federal, state (and occasionally local) taxes, workers compensation, W-4s and W-2s, I-9s, resumes and job applications, individual staff files (current and past), including job descriptions, performance reviews, salary information and time and leave records

- **Program files.** These records include lobbying records, if applicable, strategic and other planning records, records related to public programs and communications information, such as copies of newsletters, annual reports and other publications

- **Transaction and property files.** These records include legal agreements, baseline documentation reports, title insurance policies, surveys, appraisals, Forms 8283, monitoring reports, notices and approvals, contracts and leases for long-term management activities. For more on recordkeeping for conservation easements and land transactions see Practice 9G2.
ELEMENTS OF A RECORDS POLICY

Land trust policies and procedures on recordkeeping take a variety of forms. The size of each land trust and the scope of its activities dictate how it approaches recordkeeping, including whether the process is managed by the board or staff, the complexity of its records management system and the level of detail needed.

Consider:

- *Not all land trusts are the same.* A land trust’s records policy will be influenced by the:
  - Nature and complexity of the land trust’s mission, finances and programs
  - Age and maturity of the organization
  - Size of the staff and budget

- *Not all records are the same.* Different types of records require different policies and procedures:
  - Human resource and donor records require increased confidentiality protection
  - Financial records require specific attention to detail and accuracy
  - Land and conservation easement project files need to be maintained with an eye toward perpetuity

Regardless of its size or program, however, every land trust’s record management system and its recordkeeping policies and procedures should include at least the following elements:

1. Purpose or philosophy of recordkeeping
2. Document and data creation
3. Document maintenance and storage
4. Document retention periods and destruction
PURPOSE OR PHILOSOPHY OF RECORDKEEPING

Before addressing details, a land trust should examine and clarify its own philosophy or approach to recordkeeping. That approach will then govern specific procedures. For example, one land trust may choose to focus on potential litigation and state that one of the purposes of its records policy is to “create and maintain records in anticipation of litigation.” A land trust with this approach may focus on the formalities of complying with the business records rule.

Another land trust may identify its purpose is to “collect and keep the minimum amount of information necessary to prepare required reports and meet internal problem-solving needs.” This land trust may rely more on electronic databases than extensive paper files. It may be willing to accept the consequences of not having as complete a file as another land trust might maintain.

The philosophy or recordkeeping approach identified in a land trust’s records policy determines what material to keep and how. Not only will different land trusts have different approaches to recordkeeping, different philosophies or approaches may apply to different types of land trust records. For example, property records may require a different process or system of recordkeeping than programmatic records.

DOCUMENT AND DATA CREATION

A land trust records policy should address generally what information a land trust will collect and keep. The policy may include protocols of document creation.

Paper document protocols might address details such as:

- How to handle copies versus originals
- Naming files and documents
- Identifying author and dates of creation and revision
Computer protocols might address:

- Naming and labeling files and folders
- Consistency of organization with paper files
- Identifying author and versions of documents
- Eliminating the visibility of “changes” or “comments” tracked during drafting

See Practices 9G2 and 9G3 for additional discussion of protocols for paper and digital files.

**DOCUMENT MAINTENANCE AND STORAGE**

Records policies should address how and where information is kept and organized.

Issues to consider include:

- *Who needs access to records - board, staff, volunteers, the public? Which records? How quickly? How often? When should access be limited? How should access be limited?* The need for access can often be contradictory to the need for confidentiality or security. Internal computer networks and external websites can make access easier but require additional attention to security and confidentiality.

- *How will files or records be organized?* A well-crafted system for organizing files and records will save time in filing and in retrieving information.

- *Where will records be stored, and what is the location’s security?* What are the land trust’s options for storage: onsite, offsite, fireproof safe, safe deposit box and so forth? What are the risks of loss, destruction or unauthorized access, and what are the consequences? If the land trust does not have an office, who will keep its documents? How can the land trust be assured of the integrity and safety of its documents?

- *What will it cost to keep information (time, dollars and space)?* Every filing and recordkeeping option has a cost. Costs of various options must be balanced against their benefits. Land trusts should carefully evaluate how much to invest in recordkeeping so as not to shortchange their programmatic activities.

- *Contingency planning. When should computer files be backed up? Where should backups be stored?* As noted above, electronic files require different handling than paper files.

For more information on storage considerations, see Practices 9G2 and 9G3.
DOCUMENT RETENTION PERIOD AND DESTRUCTION

A records policy should address how long to keep records, and when and how to destroy them. Issues to consider include:

- **How long should information be kept?** For how long is a land trust required to keep certain records? For how long might the records be useful? Even in its early stages, a land trust will not want to keep every piece of data collected or every piece of paper created. For example, every day a land trust receives email and regular mail that it immediately deletes or tosses as unneeded for its programs.

Retention periods will differ for different documents, as illustrated by the following examples:

  - The IRS requires tax-exempt public charities to keep and make available to the public (at a minimum) the three most recent IRS Form 990s
  - A multiyear grant agreement should be kept for at least the length of the grant
  - Certain documents concerning properties conserved in perpetuity, such as conservation easement monitoring and enforcement records, should be kept permanently

As noted above, relevant statutes of limitations may mandate retention periods for certain documents. For example, in many states, a lawsuit regarding the breach or violation of a contract must be brought within six years of the breach or violation’s occurrence. Therefore, a land trust may choose to keep records on contracts for only six years following completion or cancelation of the contract on the theory that its records will no longer be necessary after that time. Most organizations are conservative in their document destruction practices, keeping documents a year or so longer than legal or utility requirements dictate.

- **What are the costs of keeping documents versus the risks of destroying them?** It costs time and money to keep documents forever. They take up space — somewhere. However, once destroyed a document may be lost forever. Does it matter? How much?

- **Are the documents also kept by others?** How easy would it be to get those documents? A deed or conservation easement agreement may be the most important document in a property file. However, it may also be the most easily replaced by obtaining a copy from the official land records. In contrast, a letter sent to a landowner noting an easement violation may be impossible to reproduce if the land trust has not kept a copy in its file.
A records policy may set forth guidelines for keeping records within a records retention schedule. An example of such a schedule can be found in Sample 2, as well as other sample policies provided on the Learning Center. A land trust should consult with its own attorney, accountant, auditor or other advisor in creating its retention schedule.

- **How should records be destroyed?** Shredding, recycling, the garbage? How do confidentiality and privacy concerns affect this decision? For digital files including email, simply deleting the file from the program may not completely destroy or eliminate the file.

**RECORDKEEPING RESPONSIBILITIES**

The records policy or procedure should assign record creation, maintenance and destruction responsibilities to designated staff or volunteers. Responsibilities can be spread among various personnel, but assignments should be clear. For example, responsibility for different categories of records may be assigned to the different people responsible for those categories of work: the treasurer, accountant or bookkeeper may be responsible for financial records, while the development associate or membership coordinator is responsible for donor files. On the other hand, a land trust may assign overall records responsibility to a particular person, such as to the board secretary or compliance-focused officer or staff. *Don’t forget to review policies over time.* A land trust should review all of its policies and practices periodically, including those related to recordkeeping. Whatever policy and procedures it adopts, a land trust should document that it has followed its policies, including documenting any policy or procedure reviews.

Land trusts needing advice in setting up recordkeeping systems should consider consulting with a local information systems company or even a local librarian. Auditors and board members can also be sources of information and assistance.

For accreditation, a recordkeeping policy must include organization, transaction and stewardship records and address records management.

**ADDITIONAL RESOURCES**

- Records Management Policy Template, Sample 1
- Records Policy Template, Sample 2