



## POLICY NO. 124

SUBJECT: DOCUMENT HOLD NOTICES AND ELECTRONIC DISCOVERY

### I. PURPOSE

- A. To promote record preservation in the event of legal challenges;
- B. To comply with “e-discovery” obligations in the event of anticipated or actual litigation; and
- C. To facilitate identification of (1) all records and data potentially relevant to an actual or anticipated lawsuit, (2) the types of computer hardware used to store electronic data, (3) the types of software needed to review data, (4) portions of data that are privileged or confidential, and (5) types of records that may be inaccessible due to prior destruction or technical hurdles.

### II. POLICY CONTENT

- A. Preliminary Compliance:
  - 1. If the Cooperative should reasonably anticipate litigation, the Cooperative shall suspend all document destruction procedures. Obligations under this policy would arise, for instance, whenever the Cooperative receives an EEOC Charge, an investigatory request from an administrative agency, or notice of threatened litigation. Unsubstantiated rumors concerning a possible claim will not trigger obligations under this policy.
  - 2. The General Manager shall notify general or labor Counsel concerning the circumstances giving rise to anticipated litigation. Counsel and management shall conduct a privileged conference concerning implementation of record preservation strategies.
  - 3. The General Manager or his designee shall issue and distribute a written Document Hold Notice to all personnel with knowledge relating to the anticipated litigation or claim, as well as all persons with the reasonable potential to have relevant records in their possession, custody or control.
  - 4. IT personnel shall be consulted immediately to determine whether there are any potentially relevant electronic records, including but not limited to e-mails, spreadsheets, presentations, phone records, electronic payment records, word processing records, draft documents, or other electronic files and documents.

5. The Document Hold Notice shall include a simple and plain statement concerning each of the following:
  - a. The nature of the actual or potential litigation;
  - b. The subjects and timeframes of potentially relevant evidence;
  - c. An explanation that the recipient has been recognized as someone with potential responsibilities under the policy;
  - d. Instructions that the recipient is prohibited from deleting or destroying potentially relevant records, until the recipient receives written notice that the “hold” has been lifted; and
  - e. A statement of any specific instructions or special steps that the recipient should take upon receipt of the notice.
6. The Cooperative shall provide timely updates regarding the status of any litigation holds, including information regarding any anticipated termination of the hold.

B. Investigations Following Hold Notice:

1. The Cooperative shall take prompt action to monitor compliance with the litigation hold process. This process shall include personal interviews with relevant staff to identify sources of potentially discoverable information and protect such information from inadvertent destruction.
2. Personal interviews shall address the individual’s experience and exposure to document retention practices, including an analysis of software programs, locations for saving documents, preservation of e-mails, the potential existence of recently deleted files on backup media, preservation of backup media, and access to servers and shared Trustees.
3. IT personnel shall participate in all personal interviews to facilitate review and analysis of issues concerning:
  - a. The nature of hardware and software used by the employees;
  - b. Processes for identifying and preserving electronic data;
  - c. The nature of the Cooperative’s e-mail system;
  - d. The existence and nature of any electronic backup protocols;
  - e. Whether the Cooperative has any archival or legacy information;

- f. An evaluation of whether it would be prudent to mirror computer hard drives, taking into account the issues involved in the case, the identity and location of potential witnesses and other potential sources for the records; and
- g. The existence of potentially relevant metadata.

C. Preservation of Records:

1. The Cooperative shall preserve all electronic and paper records potentially relevant to any actual or anticipated litigation until such time as they are advised by Counsel that the hold can be rescinded.
2. Upon termination of the litigation hold, the Cooperative shall revert to its normal document destruction policy and promptly destroy documents that were otherwise scheduled for destruction during the period of the hold.

APPROVED BY THE BOARD OF TRUSTEES

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PRESIDENT

EFFECTIVE DATE: \_\_\_\_\_

REVISED DATE: \_\_\_\_\_