

Drafting Tips for Effective Non-Disclosure Agreements



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Overview

- Introduction
- Initial Considerations
- When is a Non-Disclosure Agreement Appropriate
- What is Confidential Information
- Pertinent Provisions for NDA's
- Restrictions on Use
- Remedies
- Term and Termination
- Defend Trade Secrets Act
- Drafting Tips
- NDAs: Potential Pitfalls – case examples



Introduction

Safeguard a Business's Proprietary Information

- For a company of any size, non-disclosure agreements provide one of the most important and basic tools for protecting
 - Valuable corporate information
 - Intellectual property rights
 - patents
 - trade secrets
- NDA defines exactly what information may or may not be disclosed
- NDA can help your client hedge against honest mistakes and gauge the intentions of potential customers and collaborators.
- NDA provides more than a remedy for breach

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Introduction

When is Confidential Information at Greatest Risk?

- Departing Employees
- Failed business dealings
- Corporate espionage

The reality is, business talks fall apart, employees become disgruntled, and corporate espionage is very real. Confidential information is sometimes used inappropriately or falls into the wrong hands. Businesses must be proactive and plan for ways to get relief if this happens to them!



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Initial Considerations

What is the context of the arrangement?

- Do you need an NDA
 - Will you be receiving or disclosing confidential information?
 - Is the information protected under existing agreement?
 - Will no significant information be disclosed until a comprehensive agreement is in place?
 - Employment or other contract
- Understand the regulatory and technical requirements of the industry
- Who is the other party?
- Purpose of the arrangement – simple or complex?
- Unilateral or mutual? Differences in parties' obligations?
- Scope – how sensitive is the information being disclosed?

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When is an NDA Appropriate

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"This just says you won't reveal anything about our nondisclosure agreement."

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