



Estate & Financial Planning

Family Law

Negligence/Personal Injury

Medical & Dental Practices

Tax Law

ERISA/Pension Benefits

QUI TAM—Whistleblower

Real Estate

Entertainment Law

Employment Law

Education & School Law

Professional Licensing

Civil Rights

Commercial Litigation

Business & Corporate Law

Mergers & Acquisitions

Property Tax Appeals

Banking & Finance

Securities Litigation

Trust & Estate Law

Title Litigation

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## Disclosures on Nondisclosure Agreements

- I. **Why**—Entrepreneurs spend countless hours and amounts of money to create, develop, and fund the evolution of their projects from concepts to realities. The ideas and information resulting from those efforts comprise the core value of the entrepreneurs' business ventures. Nondisclosure Agreements, also known as Confidentiality Agreements, are contracts entered into by people who have received or may receive information from another person promising that the information received will be kept confidential and will only be used for certain purposes, all for the benefit of the person sharing the information. While certain laws, to a limited extent, will protect trade secrets and patentable information, certain information falls through the cracks of the very narrowly defined concept of trade secrets and scope of a particular patent. Without properly protecting confidential information, the progress and value of a business can be severely jeopardized by another person's use of the information for the benefit of someone other than you.
- II. **What**—To do its job of protecting certain information and being enforceable, a Nondisclosure Agreement must describe the information that is to be kept confidential. "Confidential information" will often be comprised of items that are not necessarily protected by trade secret or patent law. For example, information protected under the Agreement may be broadly described as certain ideas and concepts, which are, in and of themselves, not patentable, and/or specifically described as customer lists and contact information and business projections. In addition to the description of the information to be kept confidential, a Nondisclosure Agreement should also include terms governing:
  - Ownership of the information (belongs to the entrepreneur)
  - Permissible use(s) of the information by the recipient
  - Work product created by the recipient will be work-for-hire or, to the extent it is not, assigned to the entrepreneur
  - Indemnification of the entrepreneur by the recipient of the information for any breach of the agreement
  - Return of the information
  - Term during which the information is to be kept confidential
  - Permissible purposes of disclosure of the information
  - Description of the relationship of the parties, including what it is not
  - Explicit statement that entrepreneur's disclosure is not required
- III. **Who**—Consultants, advisors, employees, independent contractors, investors, joint venture parties... You get the idea. Entrepreneurs think that they do not need a Nondisclosure Agreement because they incorrectly believe that their information is protected by law, their project is not "far enough along" to merit protecting, or the relationship, itself, with the recipient protects the information. As an entrepreneur just getting started, you are (or should be) reaching out to consultants and advisors. These initial contacts may or may not result in long-term substantive business relationships, but the information needs to be protected regardless.
- IV. **When**— Early and often, remembering that, like any other contract, a party may breach a Nondisclosure Agreement—enforcement is key.