

Small Business TodaySM

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You Know It, Baby! Now, Keep Everybody Else from Finding Out

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You have your own special way of doing practically everything, right? Well, so does your business. Those unique methods, developed over years, are what make your business successful. If you doubt this, just consider for a moment what your competitors would love to know about your way of running your company.

Perhaps they would like to have your client list. Maybe they want your award-winning gumbo recipe. What if they knew exactly how much you were paying your key employees or what kind of discount you give your best customers? Think about what they could do with that kind of information.... If this thought makes you a little queasy, read on.

Such information in the wrong hands can damage you in different ways. Your competitors would want to use the information themselves. But, they also could use it to take away your competitive edge by telling everyone your secrets. The point is: failing to protect key information puts someone (other than you) in the driver's seat.

When You Have a Secret Worth Keeping--

- You are someone who maintains and administers networks for small businesses. To perform your service most efficiently, you have developed several unique techniques. These techniques can be learned by others in your industry if they are given access to one of the systems.
- Your company has frequent turn-over in the sales department, but those employees need access to lists of clients and the type and cost of equipment those clients have purchased in the past.
- You agree on behalf of your company to keep confidential certain information given to you by third-party clients. But your staff must have access to the information to perform their work.

One important law in Louisiana that helps you keep trade secrets is the Uniform Trade Secrets Act. This Act prohibits the "misappropriation" of secrets by others

and helps you stop further use of the information. But the Act only goes so far. Therefore, you should require people who must have access to the secret information to sign a non-disclosure, non-use or "confidentiality" agreement in order to fully extend the Act's protection.

When used as part of a comprehensive intellectual property protection plan, confidentiality agreements are one good way to ensure that people understand they are dealing with proprietary information. A written agreement tends to prove that the person signing it knew or should have known that certain information you give them is to be kept secret. Such knowledge is required to prove a claim under the Act.

Generally speaking, you should use a confidentiality agreement when you deal with employees or franchisees, and in some cases, certain clients. These agreements are also necessary if you use contract manufacturers or other service providers, especially if you are under a separate obligation to keep information private as with doctors and patients or lawyers and clients.

Moreover, a confidentiality or non-use clause can also give a non-competition agreement some teeth. After all, the purpose of non-competition agreements is to protect you from ex-employees or former owners of your company, that is, someone who knows how you do business. Likewise, confidentiality agreements are motivated by the same concern, that is, to keep others with access to your proprietary information from imitating your operation. The difference is that a non-competition agreement is far more limited in scope.

Used alone, non-competition agreements only apply to your geographic area, the type of business that you operate, and can only be enforced for the fairly short period of time allowed by law. What that means, in Louisiana for example, is that the contract can prohibit competition for no more than two years and the names of parishes where competition is barred must be stated. Further, the non-competition contract cannot prohibit *employment* of the signer by a competitor; only *ownership* of a competing business can be stopped.

Because the laws in Louisiana do not allow an employer to limit a former employee's right to seek other work, if your non-competition agreement doesn't include a confidentiality clause, you may have a problem. Your former employee, for example, can go to work for your bitter rival and share all he knows about your operation with relative impunity.

Did you know?

Louisiana Purchase Venture Capital Forum will be held Wednesday, October 25 through Thursday, October 26, at the Cook Conference Center at LSU Baton Rouge.

See business plan presentations. Learn how companies raise capital through the venture process. Meet other entrepreneurs and investors.

The cost to attend is \$200 for Baton Rouge Chamber members, \$250 for non-members and \$60 for students. Contact the Chamber at (225) 381-7125 or go online to register at www.la-purchase.com.

Or, if your business is not quite ready for the "next level" of venture capital, but you are interested in raising between \$50,000 and \$2 million, submit your business plan online to the **Louisiana Angel Investor's Network** at http://louisianaangels.angelgroups.net/58080_58081.html.

You may later argue that he should have known that certain information was a secret, and therefore, his actions were prohibited by the Uniform Trade Secrets Act. But, the Act will only apply if your former associate "knew or should have known" that the information he disclosed was a trade secret. The ultimate resolution of this dispute will be a close call, and what you think your former associate knew and what a judge or jury thinks he should have known may be two different things. Wouldn't it have been easier just to spell it all out in a contract that he signed when he still worked for you?

"Cover Your Assets: How to Protect Yourself in an Uncertain World"

*A Four-Part Lecture Series to Benefit the [Acadiana Educational Endowment](#) will be **presented by: Susan Billeaud***

Location: Acadiana Symphony
Orchestra Building, 412
Travis

Date: Tuesday, November 14, 2006

Time: 7:00-8:00 p.m. plus 30 minutes
for Q&A

Cost: \$5 per person cash at the door.

Part I—Should You Incorporate?

- *You pay premiums every year for liability insurance coverage, but are you sure it will be enough to keep your assets safe in a lawsuit?*
- *Would you like to know more about corporations, partnerships and L.L.C.'s so you can choose which is right for you?*

Another problem with non-competition agreements is that courts hate them and will do what they can to find them unenforceable. Adoption of the Uniform Trade Secrets Act indicates, however, the legislature's interest in helping companies protect their confidential information. So, why not use the Act's protections as a second line of defense in your non-competition agreements? When the two types of contracts are used together, even if the non-competition language is thrown out of court for being "overly broad" or "against public policy," you can still avail yourself of the protection of the trade secret language.

Your confidentiality agreement also should contain a provision that allows you to inform an ex-employee's new boss about the contents of that agreement. This provision is important because: First, it allows you to warn the new employer that using sensitive information given to him by your former employee makes him liable under the Act as well; and Second, having your employee expressly agree to the arrangement helps protect you from employment privacy issues associated with making such a revelation.

Whether or not you use a confidentiality agreement in your business, it is always a good idea to mark all sensitive or trade secret documents with a watermark, such as, "CONFIDENTIAL" that runs diagonally behind the text. Using such a watermark as opposed to merely a "CONFIDENTIAL" heading at the top of the document prevents easy removal of the warning. This may be important because if your employee sees only the doctored document, he could argue in a later lawsuit that he didn't know the information was proprietary.

The bottom line is: confidentiality, non-disclosure or non-use agreements tailored to suit your business are simple yet powerful tools that are often overlooked. In the information age, what you know is one of your most important assets. Therefore, protecting your secrets deserves at least the same degree of consideration you would give to protecting your building or equipment. All too often such legal planning is never even considered until it's too late.

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