



TRADE SECRETS AND NON-COMPETE ISSUES

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Trade Secrets

- Elements for Trade Secret protection
 - Trade Secret consists of information
 - The information gets economic value from being secret
 - Information must not be generally known
 - Information must be treated as secret and be the subject of reasonable efforts to maintain secrecy



Trade Secrets (Continued)

■ Proprietary Information and Inventions Agreement

- Prevents Disclosure/Use of Confidential Information of Employer
- Assists in maintaining Trade Secret protection by showing an effort to keep information secret
- Assigns all inventions to employer, disclose prior inventions, ensures won't incorporate prior employer's inventions into current employer's technology



Non-Compete Agreements

- General Rule - Unenforceable in California (even if reasonable) - 1660 CA Bus. & Prof. Code
- Exceptions (if reasonable)
 - Sale of business
 - Sale of all of shareholder's stock
 - Dissolution of partnership



Non-Compete Agreements (Continued)

- Out of State Non-competes
 - May be enforced against employee that moved to California and who entered non-compete out of state (where valid) if governed by out of state law
 - First to get a favorable judgment in their state will likely win
- Employer Can Prevent Employee From Misappropriating Trade Secrets Even Without Non-compete



Non-solicitation Agreements

- Types:

- Non-solicitation of Clients (or Suppliers)
- Non-solicitation of Employees



Non-solicitation Agreements (Continued)

- Non-solicitation of Clients

- Enforceable if:

- Reasonable; and

- Necessary protect trade secrets or confidential proprietary information of employer - Thompson v. Impaxx, Inc. (CA)

- Merely informing former employer's clients of new employment is not solicitation

- Non-solicitation of Other Employees -
Generally OK if Short Term



Unenforceable Non-Competes and Non-solicitation Agreements

- Cannot Fire or Refuse to Hire an Employee For Refusal to Sign
 - Non-compete agreement
 - Unenforceable non-solicitation agreement
- Requiring Such Agreements May Result in Entire Employment Agreement Being Unenforceable