



Nourish



MY
LEGAL
PARTNERS

www.mylegalpartners.com

Non-Disclosure Agreement (NDA)

Whether A Practice In Futility Or
Does It Really Serves Any Purpose And
How Far Is It Enforceable In The Court Of Law

Q. What is Non-Disclosure Agreement?

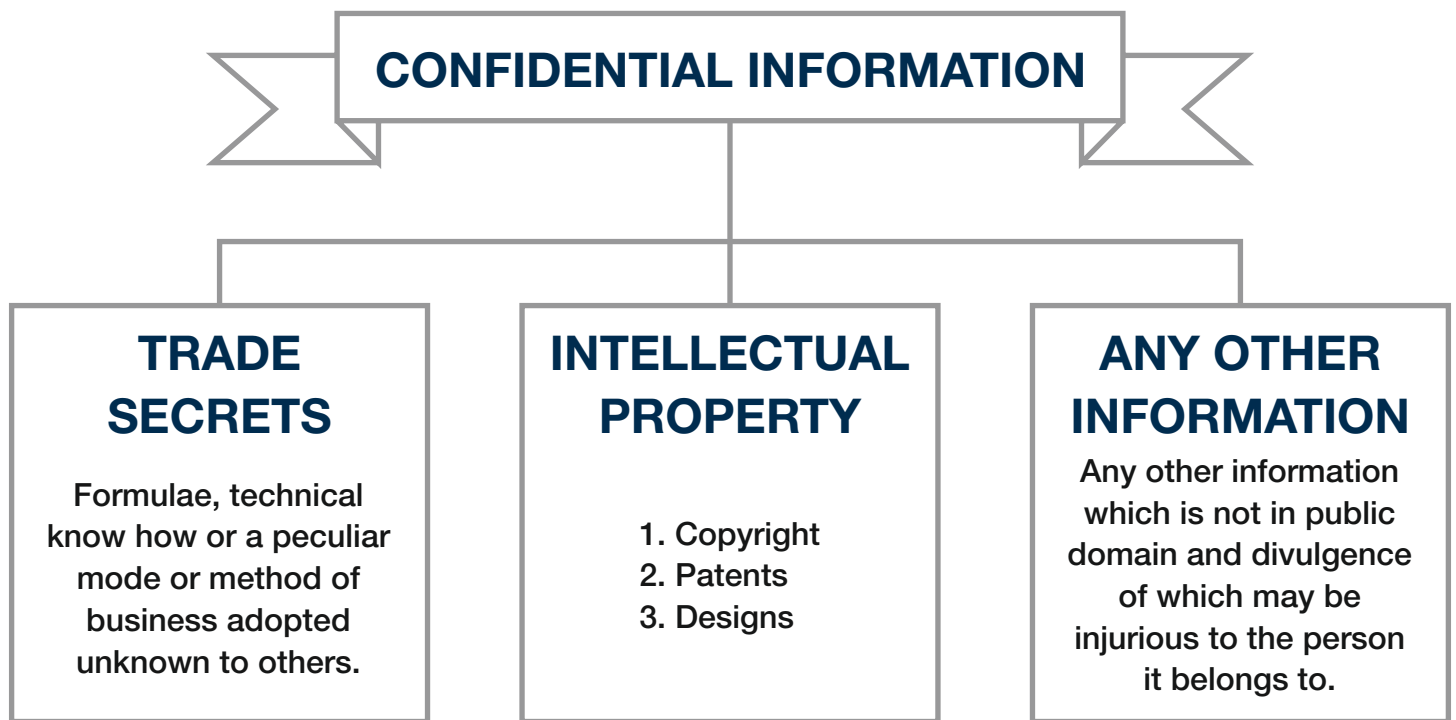
NDA is a contract through which the parties agree not to disclose certain important information to any third party. NDA is entered into between two or more parties (i.e. Employer and Employee, Franchisor and Franchisee, Business Partners, Mobile Application or Website Developer, etc.) with an intent to secure certain confidential and sensitive information and prevent it from becoming known to any third party (competitors, etc.).

In today's world signing a proper NDA has become a necessity. Be it proprietary software, a patent, a compilation crucial information or just documents – organisation need to make sure that their confidential information should remain within their domain and not end in the hands of their competitor. In the current world, a slight edge over a competing business could mean a world of difference and an entity cannot afford to lose it due to the failure to enter into a NDA.

Take a situation, wherein your employee having worked with you for a considerable time and having knowledge of your Trade Secrets, Future Plans, Clients Details and Intellectual Property (such as copyrights, patents, designs, etc.) has left the job and has started working with your competitor. You will fear that he might share all your crucial information with your competitor. In that situation you would obviously want to restrain him from sharing your information with your competitor to prevent any adverse effect on your organization.

NDA can be entered into to secure any type of information that is confidential and is not in the knowledge of many.

Confidential Information may be defined as any information, data or trade secret which is not in public domain and disclosure of which may be injurious to the person it belongs to.



There are three basic things that must be considered while drafting an NDA :

- (a) The information intended to be secured must be clearly identified;
- (b) The relation of confidence must be established between the parties;
- (c) The information must be of a type which can be treated as confidential.

Q. Whether a Non-Disclosure Agreement or Clause can be used to put restraint on employee during employment and after termination?

During the subsistence of his employment, the employee may be compelled not to get engaged in any other work or not to divulge the business information or trade secrets to others, especially, the competitors. In such a case, a restraint order may be obtained against an employee.

An employee, after the cessation of his relationship with his employer is free to pursue his own business or seek employment with someone else. When it comes to the enforcement of negative covenants in post-termination period, the Indian courts have refused to grant the relief of injunction against the employee from taking any other job. However, in the cases where employer proves that the employee is in knowledge and possession of some confidential information and such information is likely to be divulged and exploited, the Indian Courts have enjoined the parties from misusing such Confidential Information.

In the guise of a confidentiality clause, an employer should not attempt to enforce an agreement in restraint of trade as the same is void.

The intent of drafting a NDA should be centric towards the privacy and security of information so as to maintain its confidentiality, rather than coercing the employee to work with the same employer or putting unnecessary restraints on the employee from taking other Job.

Q. Whether compilations or data base can be secured from disclosure ?

Compilation of clients list or database which is not in public domain is a literary work on which the author has a copyright. An injunction order can be obtained from the courts against unauthorized use or disclosure of such compilations or database.