

Nondisclosure Agreements

The purpose of an NDA is to create a confidential relationship between parties.

By [Mary Bellis](#), About.com

Nondisclosure agreements sometimes called NDAs or confidentiality agreements are contracts intended to protect information considered to be proprietary or confidential. Parties involved in executing an NDA promise not to divulge secret or protected information disclosed during employment or other business transactions. For example, an NDA is appropriate for prohibiting others from disclosing a new design, an idea for a new Web site, or confidential material contained in a copyrighted software program. Should one of the parties to an NDA use protected information without authorization, a court can stop the violator from making any further disclosures and may award monetary damages.

Nondisclosure agreements can protect any type of trade secret or any information not generally known, providing a competitive advantage. However, the use of NDAs is not an end in itself. The purpose of these agreements is to create a confidential relationship between one person who has a trade secret and another to whom the secret is disclosed.

Parties can also establish a confidential relationship informally, either through an oral agreement or through the conduct of the parties. Few people rely on such informal arrangements, however. A one-way agreement is used when only one party is making a disclosure—for example, when a secret is explained to a contractor or investor.

A company may require an employee to sign a nondisclosure agreement or modify an agreement furnished by the employee. Generally, it does not matter who furnishes the nondisclosure agreement, so long as it contains the basic elements limiting disclosure.

Five Important Elements in a Nondisclosure Agreement

There are five important elements in a nondisclosure agreement:

- definition of confidential information
- exclusions from confidential information
- obligations of receiving party
- time periods
- miscellaneous provisions

Nondisclosure agreements typically exclude certain information from protection. Usually, these exclusions cover information created or discovered by the receiving party prior to (or independent of) any involvement with the other party. Unless agreed upon otherwise, the receiving party has no obligation to protect this excluded information.

On the other hand, the receiving party generally must hold and maintain the protected information in strict confidence and limit its use. Under most state laws, the receiving party cannot breach the confidential relationship, induce others to breach it, or induce others to acquire the secret by improper means. Most businesses accept these contract obligations without discussion.

Some agreements require the receiving party to maintain secrecy of the information for a period of years. Five years is a common length, though the time period can be negotiated. Ultimately, the length of time decided upon depends on the relative bargaining power of the parties.