



Legal Guide:
Non-Disclosure & Confidentiality Agreement
(Potential Business Purchase & Sale)

A Beginners Step-by-Step Guide for
Business Owners, Beginners, and
Non-Lawyers

Updated: March 18, 2010

NOTICE TO READER: The information in this article is a brief summary for informational purposes only. It is not meant to be legal advice. If you require information or advice as it relates to your individual circumstances you are advised to consult with a lawyer.

Download Legal Forms:

- [USA: Confidentiality / Non-Disclosure Agreement](#)
- [Canada: Confidentiality / Non-Disclosure Agreement](#)



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1. Introduction

In business matters, it is often necessary to disclose certain information to another party to facilitate the business matter. However, you may be reluctant to disclose the information without some form of written agreement to protect the legal rights of the parties.

The legal document used to protect your legal rights is called a “Non-Disclosure Agreement” (also known simply as an “NDA”) or a “Confidentiality Agreement”. All these titles refer essentially to the same type of document.

2. When Is an NDA / Confidentiality Agreement Used?

An NDA / Confidentiality Agreement is useful under any situation where you will need to disclose information to a third party that you consider as confidential. This may include information about your business methods, client information, financial information, business proposals, potential business ideas, new product ideas, or anything else you consider is confidential and you would like the recipient to not disclose to anyone else.

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When purchasing or selling a business the seller may want to keep certain information about the business confidential such as:

- (a) client contact information
- (b) methods of doing business
- (c) employee information
- (d) supplier information
- (e) financial information about the business

3. Basics of an NDA / Confidentiality Agreement

An NDA / Confidentiality Agreement usually contains provisions with the following basic elements:

1. Name of the parties
2. Date of the Agreement and the time period for the confidentiality
3. Obligation of recipient not to disclose the confidential information
4. Definition or description of what will be considered as “confidential” (e.g.: client list, or product, or books and records of the business)
5. Exceptions for certain information that is not considered confidential (e.g.: information that is already in the public domain and easily obtainable is generally not considered to be confidential)
6. Legal rights and remedies available to the disclosing party in the event that the recipient party discloses Confidential Information (e.g.: the disclosing party will have the right to obtain a court order to stop the recipient party from disclosing the information).
7. General legal provisions



4. Prepare an NDA / Confidentiality Agreement Now

You can easily prepare an NDA / Confidentiality by filling in an online form. Click one of the following links then follow the instructions below when filling out the online form:

- [USA: NDA form](#)
- [Canada: NDA form](#)

Section in online form:	Subsection	Additional Notes:
Governing Law		Generally, State / Province selected is the where the disclosing party is located
Form of Agreement	Choose form of agreement	You can choose “Confidentiality Agreement” or “Non-Disclosure Agreement”. Practically, there is no difference between the two. Choose the label that you feel most comfortable using.
	Type of Agreement:	You have several options to choose from. Select: 1. Potential Purchase/Transaction. Use this option for discussing of purchasing or selling a business. Proceed to Step 2a below.



Download:

[USA: NDA form](#)

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Section in online form:	Subsection	Additional Notes:
Parties Providing Information	Number of Sellers Providing Confidential Information	<p>Generally, you should only select 1 unless there are multiple sellers.</p> <p>If there are multiple sellers, a separate agreement for each should be used.</p>
	Person Providing Confidential Information	<p>Enter the name of each party providing or disclosing confidential information – usually this is the “Seller” (also known as the “Vendor”) of the business.</p> <p>Under certain circumstances, you may wish to include a company name and an individual name depending on the nature of the confidential information.</p> <p>It is important to enter in the full proper legal name of the party and to make sure that the name is spelled properly without spelling errors.</p> <p>(a) For an individual: reference should be made to a legal document such as a birth certificate, passport, driver’s license, or other government issue identification. The name on a credit card is usually not sufficient. If the person usually multiple names, you may wish to enter the name in a format as follows:</p> <p>“Bill Smith also known as William Smith”</p>

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Section in online form:	Subsection	Additional Notes:
		<p>(b) For a corporation: reference should be made to the corporation’s official incorporation certificate to obtain to proper full legal name of the corporation.</p> <p>Be sure to enter the address of the disclosing party. Try to avoid using a Post Office box. An actual address is preferable. If an individual is reluctant to use their residential address, use their business address instead. Specify the type (individual or corporation) and for individual, also enter the gender.</p>
Parties Receiving Confidential Information	Number of Purchasers Receiving Confidential Information	<p>Select the number of people who will be receiving the information.</p> <p>Even if the purchaser is a corporation, you may also wish to include the directors or other officials of the corporation.</p>
	Person Receiving Confidential Information	<p>Enter the name of each party who will be receiving confidential information – usually this is the “Buyer” (also known as the “Purchaser”) of the business.</p> <p>Under certain circumstances, you may wish to include a company name and also any individual names depending on the nature of the confidential information. The purpose is to prevent the individuals from disclosing the information under their</p>

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Section in online form:	Subsection	Additional Notes:
		<p>capacity as individuals.</p> <p>It is important to enter in the full proper legal name of the party and to make sure that the name is spelled properly without spelling errors.</p> <p>(a) For an individual: reference should be made to a legal document such as a birth certificate, passport, driver's license, or other government issue identification. The name on a credit card is usually not sufficient. If the person usually multiple names, you may wish to enter the name in a format as follows:</p> <p>"Bill Smith also known as William Smith"</p> <p>(b) For a corporation: reference should be made to the corporation's official incorporation certificate to obtain to proper full legal name of the corporation.</p> <p>Be sure to enter the address of the receiving party. Try to avoid using a Post Office box. An actual address is preferable. If an individual is reluctant to use their residential address, use their business address instead. Specify the type (individual or corporation) and for individual, also enter the gender.</p>

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Section in online form:	Subsection	Additional Notes:
Asset Description		<p>Enter a general description of the business being purchased.</p> <p>e.g. “all of the assets of the consulting business known as ABC Computer Consulting”</p> <p>If the purchase only relates to a certain asset, specify the asset. e.g.: “customer list of ABC Computer Consulting”.</p>
Duty of Confidentiality	prevented from competing for	<p>Since a recipient will be receiving confidential information, the Seller may want to prevent the purchaser from using the information to start a competing business.</p> <p>Usually a potential purchaser is not agreeable to having this section inserted. If the Purchaser is agreeable, select the lowest time frame that is reasonably necessary to protect the interests of the Seller.</p>
	prevented from soliciting employees for	<p>Since a recipient will be receiving confidential information about the employees of the business, the Seller may want to prevent the purchaser from using the information to approach the employees to hire them itself.</p> <p>Usually a potential purchaser will agree to having this section inserted. If the Purchaser is agreeable, select</p>

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Section in online form:	Subsection	Additional Notes:
		<p>the lowest time frame that is reasonably necessary to protect the interests of the Seller.</p>
	Duties of Confidentiality continue after termination	<p>This section should be completed. Select the lowest time frame that is reasonably necessary to protect the interests of the Seller. However, depending on the nature of the confidential information, it may be appropriate to select “indefinite”.</p>
Additional Clauses		<p>If there are any special obligations, promises, or text you want inserted, use this section.</p> <p>For example, the parties may want to include a provision that specifies the procedure for disclosure: For example:</p> <p>“access to Seller’s books and records and other information will be provided only during business hours at the offices of the Seller”.</p>
Execution Date	Signing date	<p>If you know the date the document will be effective, select it from the options, otherwise select “unsure” and fill in the date at the time it is signed.</p>
	witnesses required	<p>Select “Yes” here, unless you have a reason to dispense with a witness.</p> <p>In the event that a party to the agreement denies that they signed</p>

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Section in online form:	Subsection	Additional Notes:
		<p>the document, a witness can serve the purpose to testify that they in fact they were present and saw the document signed.</p> <p>A witness should be present and see the party signing the document.</p> <p>If the parties are not signing the document at the same time or in the same room, then separate witnesses should be used for each party.</p>

5. Next Steps

Once you have completed the form, print out 2 copies and have 2 originals signed and witnessed. One original should be kept in your records and the other original should be given to the other party.

When you are ready to proceed to the next step of actually selling the business, the parties should enter into an agreement of Purchase and Sale – you can obtain one online (see links below).

6. Other Useful Resources Online

Downloadable Legal Forms:

- Agreement for Purchase and Sale of Business:
 - [USA](#)
 - [Canada](#)
- Business Agreements:
 - [USA](#)
 - [Canada](#)
- Employee Agreements:
 - [USA](#)
 - [Canada](#)
- Consulting / Services Agreements:
 - [USA](#)
 - [Canada](#)

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