

**Protecting Your Business Interest**  
**The Legal Obligations of Your Employees to You and Your Business**

Loyalty and fidelity to one employer for a working life is no longer a common element in this fast paced working world in which we currently live. A few generations back, switching employers was often looked upon as a character flaw, a sign of a lack of dependability or even worse a lack of integrity. Today, switching employers is no longer an aberration but is rather a norm. The reality of a constantly changing workforce presents employers with the question of how to protect their proprietary and competitive business information from walking out the door with the Employee A and finding its way into the hands of Employee A's new employer, the competitor.

An employer in Virginia can find protection against a former employee using or misusing its proprietary and business information in both the common law and Virginia statutory law. Additionally, a well written agreement executed prior to or during the employment period can provide even greater protection for the legitimate business interests of an employer.

Under the common law in Virginia, an employee is a fiduciary of its employer and as such owes its employer a duty of loyalty. This duty of loyalty requires that an employee exercise the utmost good faith and loyalty toward his employer during employment. This duty of loyalty prohibits an employee from competing with an employer during employment, misappropriating trade secrets, misusing confidential information or soliciting customers, clients or employees away from the employer during employment. This duty of loyalty alone, however, does not prohibit the employee from competing with the employer after the employment relationship ends. Furthermore, a former employee is free to solicit customers or clients of a former employer so long as the former employee is not using information that constitutes trade secrets or that was misappropriated from the former employer.

An employer's trade secrets additionally are protected from misappropriation by an employee under the Uniform Trade Secrets Act, Virginia Code 59.1-336 et seq, ("the Act"). The Act sets forth a lengthy definition of when and what information constitutes a trade secret subject to the Act's protection. A customer list for example may or may not qualify as a trade secret under the Act depending upon factors such as whether the customer list is readily ascertainable from public sources or whether reasonable efforts were exerted to maintain its secrecy. If the customer list meets the definition of a trade secret, then an employer may seek relief in court under the Act to stop the former employee from using the customer list as well as recover damages.

A well written agreement containing covenants prohibiting competition after the termination of employment, conducting business with former clients, employing current employees and disseminating confidential and proprietary business information as defined in the agreement can be the most effective tool for an employer to protect its business interests. A court will enforce a covenant not to compete if it is no broader than is necessary to protect the legitimate business interests of the employer, is not unduly

harsh or restrictive on the employee's ability to earn a living, and is reasonable from the standpoint of sound public policy. Thus, in order to take advantage of this most effective tool, an employer should not just adopt a form, but rather should take steps to insure that such covenants are crafted and tailored in accord with the law to address its unique business needs.