



Confidentiality Agreements: A Shield Worth Forging

Confidential data and trade secrets are the lifeblood of many businesses. Losing a trade secret can devastate your business. Like any valuable asset, you should protect them. Failing to take protective measures now may make it harder to stop the loss or seek redress.

Colorado, like many states, enacted a Trade Secrets Act to give you tools to protect your trade secrets. The Act requires more than just labeling something as a trade secret to enjoy its protective effect. The owner of the trade secret must take reasonable measures to protect it. What is reasonable varies under the circumstances. Reasonable measures include limiting access on a need-to-know basis and requiring confidentiality agreements from anyone needing access to the information.

Failing to take reasonable measures to limit access undermines the confidentiality of information and your claim for legal protection. Requiring confidentiality agreements is one way to limit access. A confidentiality agreement allows you to define what is confidential, and when and how others may use or access the information. The agreement can require return of documents, data or other things at the end of the relationship. A well-drafted confidentiality agreement, moreover, will remain in effect after the relationship ends. A prudent person should not leave this issue open for a court to decide after the fact.

Having an effective agreement in place provides other benefits. Not all confidential information qualifies for protection under the Act. A confidentiality agreement can still protect ideas that do not qualify as trade secrets and give you many of the protections the Act affords without needing to rely solely on the Trade Secrets Act. The agreement also can require an offender to pay your attorneys' fees if you prevail in a dispute. Otherwise, if the idea is not protected by the Act, you may not be able to recover your attorneys' fees.

If you have confidential data or trade secrets, a confidentiality agreement is a must. The benefits outweigh the relatively minor time and expense required to put one in place.

About the author: Matthew D. Macy received his J.D. from Emory University School of Law. He brings special civil litigation expertise to the firm in the areas of Employment Issues, Trade Secrets, Officer and Director Liability, as well as Unfair Competition.

The information contained in this newsletter is for informational purposes only and should not be construed as legal advice or services. Use of any information herein does not create an attorney-client relationship. The law is constantly changing and there are exceptions to almost every rule of law. You should not rely on the information provided in this newsletter without seeking legal counsel.

S P R I N G 2 0 0 4

We have enjoyed watching the greening of the grounds around our office this spring along with nature's annual presentation of active young critters in a host of wildlife families. Just a few years ago, distracted by my own parental busyness and career building, I might have taken less notice of these yearly displays. But, seasons do change and the eyes focus freshly on new sights.

With my 50th birthday in sight, it could be a little sobering that the euphemistic springtime has passed for me. But it is both satisfying and a relief to know that my children have grown up well, my business has prospered and my wife and I have prepared for a long, happy and comfortable future watching our grandchildren grow.

Have you prepared for your future? Whatever season it is in your life or the life of your family or business, it is good to pause and study the road ahead.

What are your goals? Do you have plans in action to reach them? Have you sought wise counsel in evaluating your path? Do you have the resources required, and are they protected? What if something happens to you along the way? Is there provision and a roadmap for those left behind? Can you defend against thieves along the way?

Perhaps, you are satisfied that you have done everything you can to secure your dreams. Then breathe deeply, relax and enjoy all the seasons to come. If not, don't let this be your summer of discontent, we would like to help; it's what we do best.

Best wishes for a happy and secure summer season ahead!

Bob Stewart

Colorado's Construction Defect Action Reform Act: A Brief Overview of Changes

In 2003, the Colorado legislature changed the Construction Defect Action Reform Act as a means to reduce construction defect litigation within the state of Colorado. Under the Act, a construction professional is defined as an architect, subcontractor, developer, builder, builder vendor, engineer or inspector but does not include a marketing representative or salesperson employed by the builder. What do these changes mean to the construction professional?

The first and foremost change in the Act is that anyone asserting a construction defect claim against a construction professional must first give written notice with a description of the defect to the construction professional before initiating any lawsuit. Once notice is received, the construction professional has a right to inspect the property and make an offer to settle the claim.

The second change in the Act limits the amount of money one can recover in a construction defect claim against a construction professional. The recovery in such a claim is limited to actual costs to repair the damage or the fair market value of the property without the defect, whichever is less. This particular change is very significant to the construction professional as the potential liability of the professional is lessened. However, there are important exceptions to this rule which might triple liability.

On their face, these two changes in the Construction Defect Action Reform Act seem simple enough. There are, however, many other elements to the Act which can impact a construction professional's liability. The key to a successful outcome in any construction defect matter is following the Act precisely.

Are you a construction professional who might be affected by these recent changes to the law? A property owner who may have a claim against a construction professional? We are ready to answer your questions and to assist you in asserting or defending your rights.

About the author: Isabel B. Szulc is a member of the American Institute of Architects and holds a degree in Architecture from University of Miami. She received her J.D. from Nova Southeastern University in Ft. Lauderdale, Florida and provides special expertise in Construction Law for the firm's civil litigation department. Isabel's other practice areas include Real Estate; Foreclosures; and Business Law.

How Are We Doing, Really? A Call for Comments

Our website states **"it's not about what we think of ourselves, it's about what you determine is true."** That is a pretty challenging statement and to allow it to stand untested would be a hollow testimony to our client service. We desire to be authentic, we care deeply about how well we are serving you; we want to hear from you.

Is our newsletter useful? Have you used our website? Is our staff friendly and helpful? Are we timely in our responses to you? Are we meeting your expectations? What more can we do?

We want to be more than your attorneys. We want to be your solution source. We want to help equip you to make the best choices for your life and your business. So, how are we doing, really? Give us a call, drop us a note or send us an e-mail (ssr@ssr-law.net). Your feedback counts!