

PROTECTING COMPANY TRADE SECRETS

Under Colorado statutory law, a trade secret is defined as “any scientific or technical information, design, process, procedure, formula, improvement, confidential business or financial information, listing of names, addresses, telephone numbers or other information relating to any business or profession which is secret and of value.” To be a trade secret the owner must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner to have access to the secret for limited purposes.

The following factors are considered in determining whether certain information is a trade secret: 1) the extent to which the information is known outside the business, 2) the extent to which the information is known to those inside the business, 3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, 4) the savings effected and the value to the holder in having the information as against competitors, 5) the amount of effort or money expended in obtaining and developing the information, and 6) the amount of time and expense it would take for others to acquire and duplicate the information.

The most common mistake that business owners make with respect to trade secrets is the failure to take adequate precautions to protect the secrecy of the information. It is important to have safeguards in place to prevent unnecessary disclosure both inside and outside of the business.

For instance, employees should be made aware of what information is considered confidential. If possible, that information should bear a protective legend (generally in the header or footer of the document) stating that the information is confidential. Furthermore, such confidential information should only be given to those employees who have a specific need to know. Finally, it is a very good idea to have employees sign non-disclosure and non-solicitation agreements to prohibit those employees from taking your confidential information, employees or customers with them when they leave.

With respect to outside disclosure, many of the points in the prior paragraph apply. Always mark confidential information as such. Never give confidential information to an outside source without a confidentiality agreement which specifically states what that party can do with the information and to whom the information may be disclosed. The bottom line is that if you have not taken adequate safeguards to protect your trade secrets, you cannot expect a court to do so.