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Should businesses risk using form agreements from the Internet?

By [Tom McLain](#)

You can find anything on the Internet. That includes form legal documents. However, just because you can find a form legal document that seems to pertain to your particular situation, should you use it? In the majority of instances the answer is no. Is that simply a self-serving answer from a lawyer or is there a rational basis for the answer? Read on and make your own determination.

Let me provide you with a peek into how I and many other attorneys draft contracts. At the core of the process is a skill you learned in kindergarten: cutting and pasting. Even when I am drafting a contract involving a subject matter that is new to me, there is always some component of reusing clauses and parts of agreements that I have used before. The primary driving force behind this is efficiency: if I do not have to draft everything from scratch, then I can deliver the contract to my client far more quickly (and cheaply). Moreover, I am able to reuse clauses that I have spent considerable time tweaking to get just right. In effect, the contracts that I write are generally a compilation of various "form agreements." Of course, there is also a significant amount of customized drafting and creation of clauses that are necessary to fit the particular situation.

So, if I use forms, why do I say that non-lawyers should not? Well, let me answer this by explaining a little more of my drafting process. When I consider which document to use as a starting point, I need answers to four questions: 1) which party did we represent, 2) was there equal bargaining power, 3) were there unusual circumstances, and 4) how heavily negotiated was the agreement. Thus, if I were representing a seller of a business, I would not want to start with an asset purchase agreement that I drafted while I was representing a buyer who had all the bargaining power in a transaction where the seller was desperate for cash and had no attorney. If I used that particular asset purchase agreement, then I would be using a document that was heavily stacked in favor of a buyer when I was representing a seller. This drives home a most important point: when it comes to legal documents, ONE SIZE DOES NOT FIT ALL.

So lets look at a particular example that seems to be quite common. Suppose you decide to search the Internet for a free confidentiality agreement form because you need to hire a consultant for your business. The point of a confidentiality agreement is to protect the confidential and proprietary information that your company uses to create whatever competitive advantage it has in the marketplace, arguably the single most valuable asset of the company. So, when you find a free confidentiality agreement form on the Internet that

looks like it may be a good one, can you tell whether it was drafted to favor the company or to favor the consultant? If the form is "neutral," is that good enough for you or are you more interested in using a document that provides your company with as much protection as possible? Do you have the experience to know whether the form agreement is missing any key elements? Was the form agreement prepared to protect a business like yours? (Drafting to protect a technology company is far different than drafting to protect a brick manufacturer). Is the only document you need a confidentiality agreement or are there other ancillary agreements that are important? Do the provisions in the form agreement comply with the law applicable in your state or could portions of it be unenforceable? Without the answers to these questions, there is no way for you to safely predict whether using the form confidentiality agreement will protect your company or leave it vulnerable.

A confidentiality agreement may seem like a generic and harmless agreement that could be picked up from almost any source. Hopefully, this discussion has made it clear that there are many factors that need to be considered and that you need experience legal counsel to guide you through those considerations. In short, a confidentiality agreement needs to be customized to fit the particular business and the particular circumstances. The same sort of analysis holds true for almost any legal agreement you can imagine. So, can you find free legal documents on the Internet and use them? Sure. Will there be consequences? If you are extremely lucky, maybe not, but is it a risk worth taking? If you execute a form agreement, it could actually wind up being worse than having no agreement at all. Only you can decide if your business is too valuable to take such risks. You may decide that the risk is acceptable, but at least you now have an idea of the nature of that risk.

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