

TRANSCRIPT: IRVING LAW VIDEO –“**CONFIDENTIALITY AGREEMENTS IN AUSTRALIA**”

HI, I’M JAMES IRVING FROM IRVING LAW.

THANK YOU FOR JOINING ME.

IN TODAY’S VIDEO, I AM GOING TO EXPLAIN WHAT CONFIDENTIALITY AGREEMENTS ARE, WHAT INFORMATION THEY APPLY TO, AND WHAT HAPPENS WHEN THEY ARE BROKEN.

WHAT IS A CONFIDENTIALITY AGREEMENT?

“A legal contract between at least two parties that outlines confidential material, knowledge, or information that the parties wish to share with one another for certain purposes, but wish to restrict access to or by third parties. It is a contract through which the parties agree not to disclose information covered by the agreement.” - Wikipedia

HERE IS A DEFINITION OF CONFIDENTIALITY AGREEMENT PROVIDED BY WIKIPEDIA.

THE KEY THINGS TO NOTE ARE: (1) IT IS A LEGAL CONTRACT, (2) IT APPLIES TO SPECIFIC INFORMATION, AND (3) ITS PURPOSE IS TO RESTRICT ACCESS TO THAT INFORMATION.

CONFIDENTIALITY AGREEMENTS CAN BE USED IN A VARIETY OF SITUATIONS. THEY CAN BE PART OF LARGER CONTRACTS, OR STAND ON THEIR OWN. THEY COME BY DIFFERENT NAMES, BUT BASICALLY, THEY ALL DO THE SAME KINDS OF THINGS.

THE FIRST TYPE OF CONFIDENTIALITY AGREEMENT IS ONE THAT IS PART OF A LARGER AGREEMENT.

IF THE PARTIES HAVE AN ONGOING RELATIONSHIP, FOR EXAMPLE, AN EMPLOYER AND EMPLOYEE, THE CONFIDENTIALITY AGREEMENT MAY TAKE THE FORM OF A CLAUSE IN ANOTHER CONTRACT, IN THIS CASE A CLAUSE IN THE EMPLOYMENT AGREEMENT.

THE SECOND TYPE OF CONFIDENTIALITY AGREEMENT IS ONE THAT STANDS ALONE.

IF THERE IS NO OTHER RELATIONSHIP BETWEEN THE PARTIES, FOR EXAMPLE, IF TWO UNRELATED COMPANIES ARE DISCUSSING A POSSIBLE JOINT BUSINESS VENTURE, THE CONFIDENTIALITY AGREEMENT IS OFTEN A STAND-ALONE DOCUMENT USUALLY CALLED A NON-DISCLOSURE AGREEMENT OR “NDA”.

A CONFIDENTIALITY AGREEMENT IS DESIGNED TO KEEP INFORMATION SECRET. NOT ALL INFORMATION CAN BE, OR NEEDS TO BE SECRET. TO ENSURE IT IS ENFORCEABLE, THE AGREEMENT SHOULD MAKE EXCEPTIONS FOR CERTAIN TYPES OF INFORMATION.

EXCEPTION 1: IF INFORMATION IS ALREADY PUBLIC, IT SHOULDN’T BE MADE SUBJECT TO A CONFIDENTIALITY OBLIGATION.

EXCEPTION 2: IF INFORMATION IS ALREADY IN A PARTY'S POSSESSION LEGITIMATELY, IT SHOULD BE EXEMPT. NOTE THAT THE INFORMATION MAY BE SUBJECT TO A SEPARATE, EARLIER AGREEMENT.

EXCEPTION 3: IF INFORMATION GETS OUT INTO THE PUBLIC DOMAIN THROUGH NO FAULT OF THE PARTIES, THE AGREEMENT SHOULD NOT APPLY TO THAT INFORMATION.

EXCEPTION 4: IF INFORMATION IS DEVELOPED INDEPENDENTLY BY A PARTY, IT IS NOT APPROPRIATE TO MAKE IT CONFIDENTIAL. BUT, IT MAY BE APPROPRIATE TO LIMIT THE USE OF THAT INFORMATION TO THE RELATIONSHIP BETWEEN THE PARTIES.

THE DETAILS OF A CONFIDENTIALITY AGREEMENT ARE EXTREMELY IMPORTANT. WHETHER THE AGREEMENT WILL FUNCTION AS DESIRED WILL DEPEND ON HOW CAREFULLY IT SETS UP RULES FOR THE EXCHANGE, LABELLING, STORAGE, USE, SHARING, DESTRUCTION AND RETURN OF INFORMATION.

TO AVOID DOUBT, THE TYPES OF INFORMATION THAT THE AGREEMENT IS INTENDED TO PROTECT SHOULD BE SPECIFIED CLEARLY.

FOR EXAMPLE: "ALL INFORMATION WHICH IS MARKED AS BEING 'CONFIDENTIAL', OR, "ALL COMPUTER CODE AND SOFTWARE".

BAD DRAFTING COULD LEAD TO CONFUSION ABOUT WHETHER CERTAIN INFORMATION IS COVERED OR NOT.

IT IS A GOOD IDEA IN CONFIDENTIALITY AGREEMENTS TO SET STANDARDS FOR THE MEASURES TO BE PUT IN PLACE BY THE PARTIES TO PROTECT INFORMATION. FOR EXAMPLE, WHETHER INFORMATION SHOULD BE RESTRICTED TO CERTAIN PEOPLE, OR LOCKED OR ENCRYPTED IN SOME WAY.

IT IS IMPORTANT TO RESTRICT THE USES THAT SHARED INFORMATION CAN BE PUT TO.

IF THE INFORMATION IS BEING SHARED FOR A SPECIFIC PURPOSE, FOR EXAMPLE, TO EVALUATE A PROPOSED JOINT VENTURE, THEN NORMALLY THAT SHOULD BE THE ONLY PURPOSE FOR WHICH THE INFORMATION CAN BE USED.

THIS WILL MEAN THAT USE FOR ANOTHER PURPOSE WILL BECOME A BREACH OF THE AGREEMENT.

MANY CONFIDENTIALITY AGREEMENTS INCLUDE AN ACKNOWLEDGMENT THAT A BREACH OF THE AGREEMENT WILL CAUSE HARM TO THE PARTY WHOSE INFORMATION IS DISCLOSED TO THIRD PARTIES, AND THAT THE INJURED PARTY WILL BE ENTITLED TO TAKE ACTION.

WHILE IT IS GOOD TO SET UP RULES FOR MANAGING INFORMATION, THE POINT OF PUTTING THE RULES IN A CONTRACT IS TO MAKE THEM ENFORCEABLE.

IN THIS PRESENTATION, WE HAVE PROVIDED ONLY A GENERAL IDEA OF HOW A CONFIDENTIALITY AGREEMENT WORKS.

IF YOU WANT TO CREATE A CONFIDENTIALITY AGREEMENT TO PROTECT YOUR OWN VALUABLE INFORMATION, YOU SHOULD CAREFULLY CONSIDER GETTING ASSISTANCE FROM A LAWYER.

WHILE IT IS POSSIBLE TO DOWNLOAD TEMPLATES FROM THE WEB, IT IS ALSO POSSIBLE TO MAKE MISTAKES WHEN USING THOSE TEMPLATES.

LOSING CONTROL OF YOUR CONFIDENTIAL INFORMATION MAY COST YOU A LOT MORE THAN THE LEGAL FEES FOR GETTING A RELIABLE DOCUMENT DRAWN UP

USUALLY A PARTY ENFORCES A CONTRACT BY GOING TO COURT UNLESS THE CONTRACT PROVIDES ANOTHER WAY TO ENFORCE IT.

THE PARTY CAN ASK THE COURT FOR FINANCIAL COMPENSATION, ALSO CALLED "DAMAGES".

THE COURT CAN ALSO MAKE AN INJUNCTION WHICH IS AN ORDER STOPPING THE OTHER PARTY FROM CONTINUING TO ABUSE THE CONFIDENTIAL INFORMATION.

THAT WAS A VERY BRIEF INTRODUCTION TO HOW A CONFIDENTIALITY AGREEMENT WORKS. YOU SHOULD NOW BE IN A BETTER POSITION TO UNDERSTAND WHETHER YOU NEED A CONFIDENTIALITY AGREEMENT, AND, IF SO, WHAT KINDS OF THINGS THE AGREEMENT SHOULD AND SHOULD NOT COVER. IF YOU HAVE ANY QUESTIONS ABOUT ANYTHING IN THIS PRESENTATION, YOU ARE WELCOME TO EMAIL US. THANK YOU FOR YOUR ATTENTION.

This transcript: Copyright © 2016 Irving Law

DISCLAIMER: This transcript and the video it relates to are not intended as legal advice for any particular person, but only as an educational and informational discussion of topics of general interest. The transcript and video represent the law as it applied in Australia at the time of making the video. No guarantee of accuracy is provided.

PLEASE VISIT THE IRVING LAW WEBSITE FOR MORE FREE INFORMATION ABOUT THE LAW IN AUSTRALIA: <http://irvinglaw.com.au>