
Frequently Asked Questions Regarding Non-Disclosure Agreements

This information is provided for reference only and is not legal advice. If you have questions about Non-Disclosure Agreements or any legal documents, please consult an attorney for advice.

1. What is a Non Disclosure Agreement (NDA)?

A Non-Disclosure Agreement is a legal document that, when signed by all the participating parties, prohibits one party of the NDA from sharing confidential information disclosed by the other party. NDA's can be unilateral, meaning only Party A is required to maintain confidentiality of information disclosed by Party B; or mutual meaning each party is required to maintain confidentiality of the other party's information.

2. Why would someone be asked to sign an NDA?

There are many reasons an NDA may be beneficial. In B2B situations, it often is necessary for companies to share confidential information with each other before they decide if they will enter into a business relationship with each other. Since a contract for the relationship doesn't exist during the "courtship" process, a NDA protects confidential information. In employee/employer relationships, employees may have access to confidential information such as HIPPA materials, client/customer information, company financial or strategy terms, and the NDA clarifies the employee's obligations to keep such information confidential.

3. Who is most likely going to be doing the asking, and why is it necessary?

Generally the party who will be sharing confidential information will ask for a NDA. See above for mutual NDA description, in which either party may request the document.

4. Do I need to hire a lawyer to review it before signing?

It is always a good idea to have a licensed professional review any contract before you sign it. NDA's are legally binding contracts after the document is signed.

5. Can I tell anyone that I've signed an NDA?

That restriction or allowance will be addressed in the NDA. If the document is marked "confidential," it falls under the restrictions described in the NDA.

6. Generally how long does the NDA apply for? Does it expire?

That information also should be addressed in the NDA. There is no standard for NDA terms, although there may be standards for certain industries or relationships. Financial investment NDA terminations will differ from an employment relationship NDA. If the NDA does not have a termination date or trigger event, the obligation to protect confidential information is perpetual – until the information becomes public through no fault of either party.

7. Does the NDA extend to anyone else on my team, or does it just apply to that individual who signed it?

That information also should be addressed in the NDA. Generally, if a company signs a NDA, the confidentiality obligation applies to the company, company officers, owners, employees, directors, and any other person to whom the company makes the information available.

8. Should I recommend others on my team who are involved with a project to sign an NDA? Or is it better to have only one person sign the NDA, for example?

Generally, a company will have an established process for signing contracts. NDA's are contracts and should follow the policy established by the company.

9. What happens if I don't want to sign it and refuse to do so?

The party who asked for the NDA is not obligated to share information with you if you elect not to sign a NDA when they have requested one. That could result in you not having access to information you would prefer to review or it could lead to the other party deciding to end the "courting."

10. What is the penalty if an NDA is willingly signed but then breached, intentionally or otherwise, by the signer?

NDA's are contracts and subject to contract law remedies. Additionally, the NDA may contain specific remedial actions that are available to the parties if the NDA is breached.

11. What else do I need to understand about an NDA?

Although NDA's are generally short and contain similar content, you should understand the terms of each document clearly and consult with an attorney if you are unsure of what the NDA is obligating you to do.