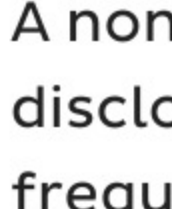


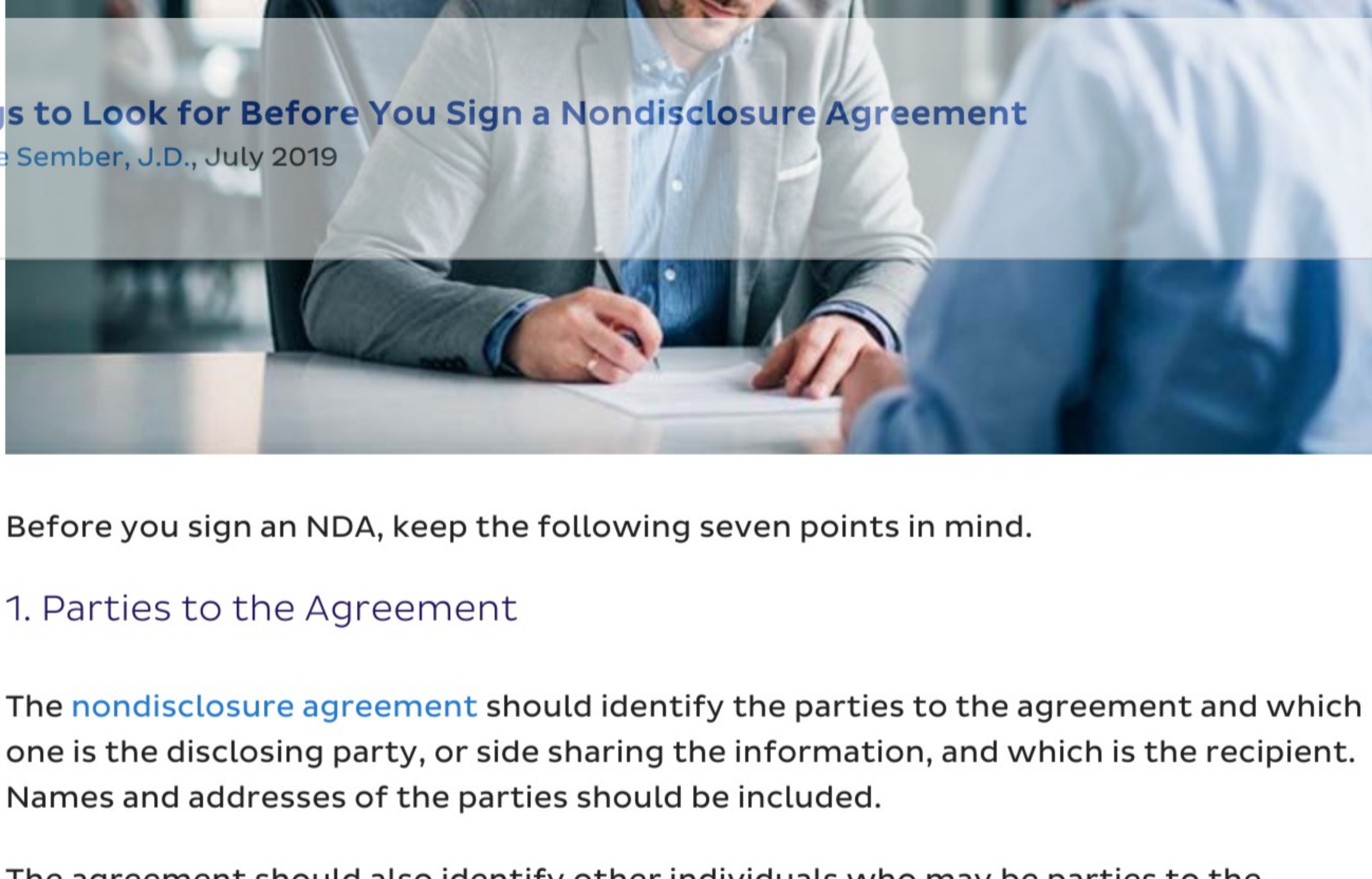


7 Things to Look for Before You Sign a Nondisclosure Agreement



by **Brette Sember, J.D.**
Freelance writer

A nondisclosure agreement is a document in which one party promises not to disclose the confidential information of another party. These agreements are frequently used in employment and business negotiations, such as when a company is seeking an investor. The purpose of a nondisclosure agreement (NDA) is to allow two parties to conduct business while ensuring that any information exchanged is kept private.



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by Brette Sember, J.D., July 2019

The **nondisclosure agreement** should identify the parties to the agreement and which one is the disclosing party, or side sharing the information, and which is the recipient. Names and addresses of the parties should be included.

The agreement should also identify other individuals who may be parties to the agreement. For example, if an investor is the recipient, they might need to show the information to their attorney, accountant, or business partners. These additional parties will also be bound by the nondisclosure agreement.

2. Identification of What Information Is Confidential

Before you sign a nondisclosure agreement, be sure the agreement is very clear about what information is protected and what is not. This is called the scope of the agreement. Nondisclosure agreements commonly cover matters such as customer lists, business plans, personnel information, financial statements, information about inventions, and trade secrets. The disclosing business usually wants the scope to be as broad as possible, while a narrower scope is more advantageous for the recipient. The agreement should also explain how the recipient can use the information, such as only for evaluating the disclosing party's business for purchase.

The agreement should clearly also define the exclusions to the agreement, or the types of information that do not need to be kept confidential, such as information an employee knew before they started working at a company or information a potential investor was aware of before they looked at a business plan. Exclusions to the agreement also include material that is public knowledge and information the recipient had already developed on their own or which was previously disclosed to them.

3. Time Frame

The document should specifically indicate how long the agreement is binding, which can often be several years, even if the end date is after the business between the parties has concluded. For example, if Tim's Department Store is considering buying Norma's Village Boutique, the parties will execute an NDA so Tim can see the details of Norma's business. Even if he decides not to buy the business, he must still keep the shared information confidential for the length of the agreement.

4. Return of the Information

Once the business between the parties has concluded or an employee has left a job, the agreement requires that confidential information must be returned to the disclosing party, or destroyed or deleted. The recipient usually needs to confirm they have done this.

For example, Myra's Handmade Booties shares its business statements with Mateo's Angel Investors, who are considering investing. Once Mateo either concludes the deal or decides not to invest, any documents he received must be returned and any electronic data must be destroyed. (It's worth noting that, although most electronic data is never completely deleted, it should be deleted from daily accessibility.)

5. Obligations of the Recipient

A nondisclosure agreement usually states that the recipient agrees not to disclose or use the shared information, whether purposely or inadvertently. For example, as the potential investor in a video game, you are given access to the software so that you can test drive it. If you play the game on the subway, where other people can see it, you've breached the agreement. A cellphone company employee who is testing a prototype model and mistakenly leaves it in a coffee shop would likely also be found to have breached the agreement.

6. Remedies

The NDA should state the course of action the disclosing party can take if the agreement is breached. This could include:

- **Injunctions.** The disclosing party often has the right to obtain an **injunction against the recipient** if they breach the agreement, to prevent further breaches.
- **Indemnification from loss caused by the breach.** The disclosing party is usually entitled for compensation for damage caused by the breach.
- **Other remedies rooted in breach of contract.** These could include actions for copyright, patent, or trademark infringement; breach of fiduciary duty; and more.

7. Other Clauses

There are additional clauses to look for in a nondisclosure agreement, including:

- **Jurisdiction.** The agreement should state where any disputes about the agreement will be handled. Consider whether that location is convenient for you.
- **Mutual nondisclosure.** In some situations, it's a good idea to create a **mutual nondisclosure agreement**, which requires both parties to keep information they have learned confidential. When information is shared in only on direction, it is known as a **unilateral nondisclosure agreement**.
- **Nonsolicitation.** It's common for an NDA to prevent the recipient from seeking to hire away employees from the disclosing party or to prevent them from contacting the disclosing party's clients or customers.

Although every NDA is different and so may include clauses not mentioned above, these are seven of the most common sections to look for. To create your own document, you can have an attorney draft one, or you can use an **online NDA template**.

Ready to start your Nondisclosure Agreement?

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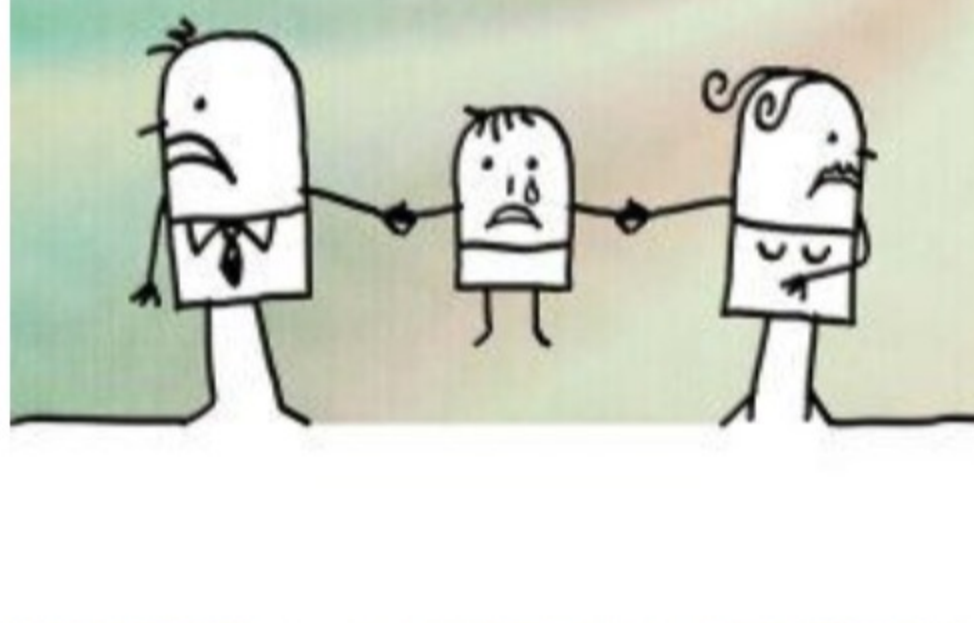
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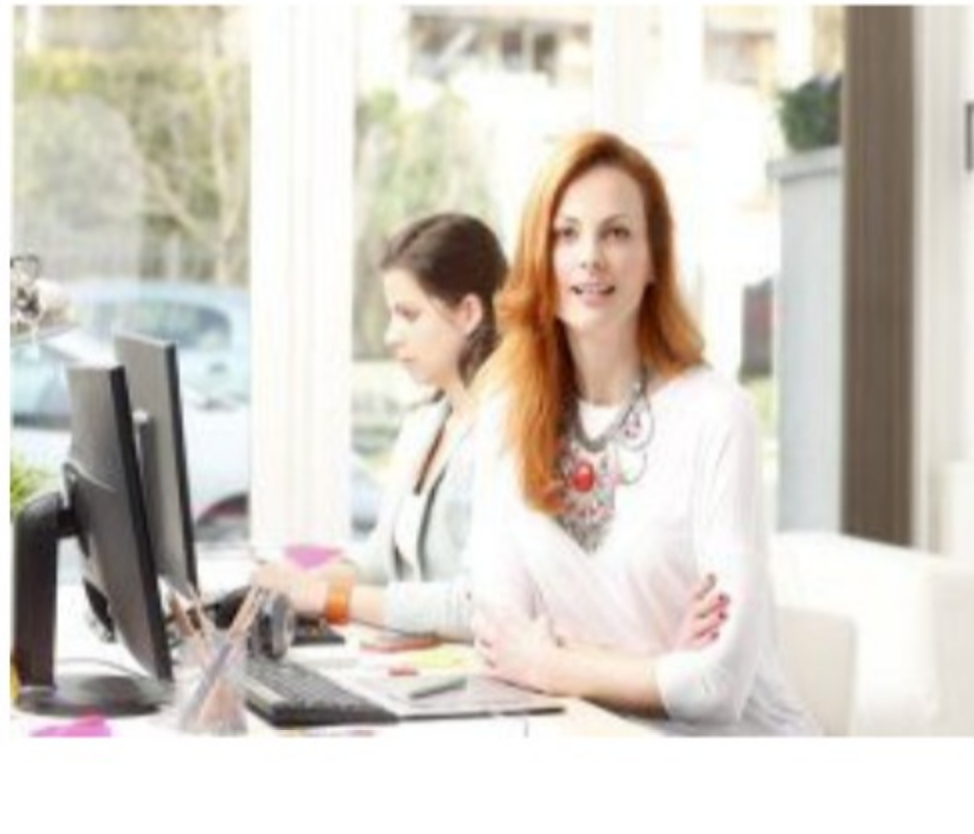
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