Non-Compete & Non-Solicitation Agreements in Florida

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Enforceability of Non-Competes

(a/k/a Restrictive Covenants)

- **Agreements that restrict or prohibit competition <u>are</u> enforceable …**
- **<u>Provided</u> they are reasonable in:**
  - **Duration**
  - **Geographic area**
  - **Line of Business**



To Enforce a Restrictive Covenant

- **The plaintiff must <u>prove</u>:**
  - **A legitimate business interest ("LBI") exists**
  - **That justifies the restriction on competition, <u>and</u>**
  - **The restriction is "reasonably necessary" to protect the LBI**



What is a Legitimate Business Interest?

- **Legitimate business interests (LBI) include protecting:**
  - Trade Secrets (defined by Fla. Stat.)
  - Valuable confidential business information
  - Substantial relationships with clients
  - Extraordinary or specialized training
  - Customer goodwill

Trade Secret Definition

- Information, formula, compilation, program, device, method, technique or process
- Has Economic Value
- Not available to others who can use it
- Maintained as confidential & secret

Defenses to Enforcement

- Unreasonable in geographic scope
- Unreasonable time period
- Scope beyond the line of business
- Not reasonably necessary to protect the LBI
- Note Court has authority to "blue pencil"



Not Recognized as a Defense

- A court may not consider any individualized economic or other hardships



Reasonable Time Limits

- <u>Former distributor, dealer, franchisee, licensee:</u>
  - 1 year or less presumed reasonable
  - More than 3 years presumed unreasonable
- <u>Former employee:</u>
  - 6 months or less presumed reasonable
  - More than 2 years presumed unreasonable
- <u>Seller of assets or ownership in a business:</u>
  - 3 years or less presumed reasonable
  - More than 7 years presumed unreasonable

Other Important Requirements for Enforcement

- Restrictions must be in writing and signed
- Must pay all consideration promised in return for restrictive covenant

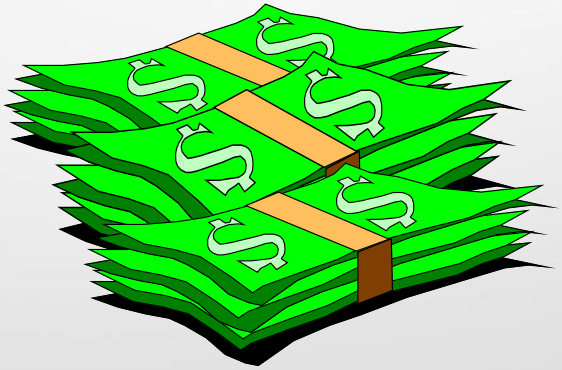


Other Important Provisions, ctd.

- Construed in favor of reasonable protection for LBI
- Violation of restriction presumes irreparable harm

Other Important Provisions, ctd.

- May obtain a temporary injunction enforcing restrictive covenant
- Must post a bond to secure damages if wrongful
- Bond may not be waived



DISCLAIMER

This commentary is for informational purposes only, is not legal advice and does not establish an attorney-client relationship. You should seek appropriate legal advice from a licensed attorney before making any decision based on these comments. The hiring of a lawyer is an important decision that should not be based solely upon advertisements.