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PROTECTING YOUR INTELLECTUAL PROPERTY

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A. Introduction – The Importance of Protecting Your Company’s Most Valuable Assets

1. What is a “Trade Secret”
2. The Uniform Trade Secrets Act
3. Computer Fraud Act

B. Types of Restrictive Covenants

1. **Non-Disclosure Agreements or Confidentiality Agreements:** Prohibit a former employee from disclosing confidential information and/or trade secrets after the termination of employment.
2. **Non-Competition Agreements:** Prohibit competition after termination of employment
3. **Non-Solicitation Agreements:** Prohibit solicitation of clients or employees after the termination of employment

C. Enforceable Restrictive Covenants

1. The Judicial Standard for Enforcement – Solari Indus., Inc. v. Maldy, 55 N.J. 571 (1970)
 - A. Covenant must protect a legitimate interest of the employer
 - B. Covenant must not impose undue hardship on the employee
 - C. Covenant must not be injurious to the public
2. Legitimate Interests of the Employer
 - A. Trade Secrets
 - B. Confidential Information
 - C. Customer Relationships
 - D. Pricing Formulas, Price Lists and Costs
 - E. Customer Particulars and Requirements
3. Non-Protectable Interests – Cannot be used merely to aid the employer in extinguishing competition.

D. Defining Reasonableness

1. Geographic Restraint
2. Time Parameters

E. Hiring/ Retention and Termination Considerations

1. Issues Concerning Departing Employees
 - A. Conduct an exit interview
 - B. Inquire into potential conflicts
 - C. Put the employee on notice
2. Issues Concerning New Employees
 - A. Determine if the employee is subject to any contractual obligations or other restrictions.
 - B. Advise the employee that disclosure of trade secrets is prohibited.
 - C. Advise the employee that employee will be exposed to trade secrets.
 - D. Advise the employee as to the importance of maintaining confidentiality.
3. Issues Concerning Existing Employees – Existing employees may be asked to sign a non-compete at the time of a promotion, raise or presentment of a new benefit.