

Restrictive Covenants: The Business Bear Spray (Part 2 of 2)

Last month, I shared how my husband and I survived a close encounter with a black bear up in Canada and have now vowed not to hike in bear country without bear spray. Our encounter made me realize that the decision to carry bear spray is not unlike a business client's decision to use restrictive covenants to protect intellectual property and other confidential information.

Consider Shirley, the owner of a thriving property management firm, who hired an account manager two years ago. The account manager worked closely with Shirley's clients and Shirley gave her unfettered access to business information. Now, the manager has quit and brazenly told Shirley that all of the clients are going with her. Shirley wants to know what she can do.

My first question for Shirley: Did the manager sign an agreement with restrictive covenants? **The three most common covenants include: 1) Non-competes, 2) Non-solicitations and 3) Non-disclosures.** Non-competes prohibit a person from competing in a particular geographic area for a limited period of time. Non-solicitations prevent a person from soliciting customers, employees,

or select vendors for a limited period. Non-disclosures prevent the use or disclosure of confidential information which should be defined to include more than just trade secrets, but also client lists, pricing information, contracts, financials, client files, or anything else the employer seeks to protect.

Well-drafted restrictive covenants give a business owner breathing room to re-establish client relations, deter conduct that would otherwise harm the business, and allow the business owner to file suit to enforce the contract and

seek immediate injunctive relief. Without a signed agreement, state common law or your state's version of the Uniform Trade Secrets Act may afford some protection, but at greater cost and less certainty. The cost of drafting and getting the employee or contractor to sign restrictive covenants is a bargain compared to the cost of filing suit, paying legal fees, or, worse, losing your clients. Once an employee sets up a competing business or misappropriates business information, it's too late to buy bear spray. Brigid Heid: beh@cpmlaw.com

¹For information on real bear spray, visit <http://www.igbconline.org/html/bearpepperspray.html>



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