



## **Trade Secrets: What Are They, and How Should My Company Protect Them?**

Does your company have trade secrets? Many executives and entrepreneurs consider trade secret protection to be reserved for sophisticated formulas, high-tech innovations, or legendary secrets like the Coca-Cola recipe or KFC's eleven herbs and spices.

In reality, courts have recognized that trade secret law may protect innovations as varied as:

- Customer lists;
- Underwriting guidelines;
- Pricing documents;
- Documents reflecting business development strategies;
- Operations manuals;
- Flowcharts organizing data into categories;
- Shrimp broodstock; and
- Recipes for Korean food.

*(Yes, these are all real examples.)*

### **The Statutory Framework**

The **Maryland Uniform Trade Secrets Act** provides trade secret protection to “information, including a formula, pattern, compilation, program, device, method, technique, or process.” The federal Defend Trade Secrets Act of 2016 extends coverage to “all forms and types of financial, business, scientific, technical, economic, or engineering information” that meets specific criteria. It’s hard to think of a business process or system that **wouldn’t** fit within that definition.

But there’s a catch: under both statutes, a trade secret is protectable only if it:

- (i) derives independent economic value from its secrecy; and
- (ii) is the subject of reasonable efforts to maintain the secrecy.

So, broadcast your trade secret to the world (or even share it unnecessarily), and you may lose statutory protection. And if your information is too similar to processes or systems that are publicly-known, they may not be protected.

### **How to Protect Trade Secrets**

The key under both the Maryland Uniform Trade Secrets Act and the Defend Trade Secrets Act is **reasonableness**. You don’t have to keep your trade secrets locked away in a crypt: you can use them to further your business interests. Think seriously, though, about concepts like:

- (i) who has access;
- (ii) who needs to have access; and
- (iii) what protections you have in place to avoid or minimize disclosure.

You don’t need state-of-the-art encryption to qualify for protection under these statutes, but think about protections like passwords, explicit rules in manuals and handbooks, and logging of access to sensitive materials or systems.

Reasonableness is business-specific. If you have questions, we can help.

### **What Happens If My Trade Secrets Are Stolen?**

Successful companies are the targets of trade secret misappropriation—by unethical competitors and sometimes by disloyal employees. In a leading case our firm litigated, the federal court found that a senior executive misappropriated company business information that the court found qualified for trade secret protection. The court made that finding before trial, which is unusual, as questions about what constitutes a trade secret or misappropriation often are resolved out of court or at trial.

And would-be thieves should beware: both the federal and state statutes authorize courts to impose attorneys’ fees and compensatory and exemplary damages

against trade secret misappropriators. Departing employees' conduct can lead to a world of trouble down the road, for the employee and maybe even his or her new employer.

*\*This client alert is for informational purposes and is not legal advice. View [previous issues](#) of Monday Minute.*

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Need advice on protecting your company's trade secrets? Worried about unfair competition or trouble with departing employees? Contact Gallagher's trade secret law attorneys:

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## About Our Firm

For more than 60 years, Gallagher Evelius & Jones has served as trusted counsel to businesses including real estate developers, regional and local healthcare systems (nonprofit), religious entities, universities and colleges, clean energy investors, and more, building longstanding relationships with organizations across the Mid-Atlantic region and beyond. Our attorneys focus on the practice areas important to our clients including litigation, employment, tax, finance, real estate, and general corporate matters.

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