



Confidentiality Agreements and Alaska Government

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Confidentiality Agreements

➤ Basics

- Who/What/When/Where/Why

➤ Brief History of Agreements in Alaska

What is a Confidentiality Agreement?



- Agreement between the parties (and in some cases their agents).
- Not to be disclosed to the public or any third party (information deemed confidential of imperative for the success of the transaction).
- Commonly found in certain business transactions.
- Proprietary information may be exchanged between the parties.
 - Examples include: Confidential data, research, books, records, trade secrets regarding the business, operations, strategic materials, etc.
- In some cases, to see if the transaction can go forward.

What else may also be included?



- Parties' investigation of assets (including on locations).
- May involve "return clauses."
 - For example: If deal doesn't go through, usually the confidential or proprietary information is returned to the other party as soon as practicable and upon request of the party.
- May involve discussions on future transactions.
- May involve provisions related to press releases or public announcements without prior approval of all parties.

Anything else?



- Some include agreements not to assign rights or obligations to another party.
- Some include irreparable injury clauses, including recovery steps, injunctive relief, etc.
- If there is a dispute – there may be provisions that may include alternative dispute resolution or outlines the court of relevant jurisdiction.

Why is this important?

- Recognition that some transactions rely on a voluntary exchange and assessment of information. In some cases, in order to have any effect, entities will only enter those agreements if they have protection.
- For example: In the oil industry, there may be disclosure of transportation costs or valuation practices. That may be valuable for competitors.

Confidentiality and the State of Alaska



- Start here: AS 40.25.110(a) – “unless specifically provided otherwise, public records of all public agencies are open to inspection.”
- However, the right to public access is balanced with:
 - The privacy rights in the state constitution; and
 - The need for government officials to engage in policy deliberation without undue interference.
- As a result, AS 40.25.120 includes a number of exceptions to public records requirements.
- In fact, specific types of records are confidential in at least 34 of Alaska’s 47 statute titles.

Seven (7) Statutes Allow or Require Executive and/or Legislative Branch Officers and their Employees to Enter into “Confidentiality Agreements.”

- AS 31.25.090(f-g) – Alaska Gasline Development Corp (AGDC)
- AS 37.10.220(b)(4) – Alaska Retirement Management Board
- AS 38.05.020 (b)(12) – Department of Natural Resources (DNR)
- AS 40.25.100 – Department of Revenue (DOR)
- AS 40.25.120 (a)(13-14) – AGDC
- AS 43.05.095(c) – DOR
- AS 43.98.060 – DNR/DOR Oil and Gas Competitiveness Review Board

Two Additional Statute Sections Provide for Confidentiality of Information Related to North Slope Gasline Construction.

- AS 43.82.310 – DNR/DOR Stranded Gas Development Act
- AS 43.90.160 – DOR Alaska Gasline Inducement Act

Historically Speaking...

- Applications received from potential private-sector participants in Governor Palin's Alaska Gasline Inducement Act were strictly confidential (AS 43.90.160).
- In 1999, legislators were required to sign confidentiality agreements prior to receiving briefing from the Knowles Administration on the BP-ARCO merger.
 - Why?
 - Contained proprietary corporate information.
 - Contained state and federal tax issues.
- In 2005, state officials/employees were required to sign confidentiality agreements for access to oil and gas market reports by Wood MacKenzie, Ltd.

Sampling of Responses from Executive Branch Departments – Summary of Confidentiality Agreements

- DNR includes in the appendices to its “request for proposal” procedures, a “nondisclosure and confidentiality” section that forbids contractors from disseminating confidential information. It delineates the types of information covered.
- DHSS requires business associates that receive protected health information to sign an agreement that delineates how information is handled. Included in the agreement are numerous provisions outlining confidentiality requirements.
- DPS and Council on Domestic Violence and Sexual Assault require “assurances” from grant recipients among which is a requirement that the grantee will protect “program participant confidentiality and maintain policies and procedures to guarantee program participant confidentiality.”

Questions?

