

Covering your bases

Company owners protect their assets with noncompete agreements. *By EMILY SCHAPPACHER*

When Dennis Topo discovered a former employee of Allison Lawn & Landscape Service was trying to recruit clients from the company to start his own business, he issued a cease and desist letter on the grounds that the individual was in violation of a signed noncompete agreement. The contract bars former employees from contacting Allison customers for one year after termination. The letter was enough to resolve the situation, but Topo, director of operations, says without the noncompete agreement, there was little else he could have done to protect the Tampa, Fla.-based company and its assets.

“We are a family-owned business and our employees are considered assets to the company,” Topo says of Allison, which has a 75 percent residential and 25 percent commercial client base and generates less than \$1 million annually. “But those assets come with intellectual property and when those assets leave, we want to make sure we retain the intellectual property that is our customers. It’s pretty much basic business administration for a small company.”

Kevin Kehoe, owner of 3PG Consulting, says “non-compete agreement” tends to be a loosely-used term. He clarifies there are three types of legal contracts that can help landscape company owners protect what is rightfully theirs: traditional noncompetes, nonsolicitations and confidentiality agreements.

A traditional noncompete agreement is a contract under which an employee agrees not to enter into or start an enterprise that competes with an employer for a designated number of years after the employee leaves the company. These can be difficult and expensive to enforce, particularly in states with right-to-work laws, Kehoe says. Noncompetes, he adds, typically apply to higher-level employees, such as partners, those with equity in the firm or those with significant customer interaction. They are not the type of agreement necessary for maintenance workers or hourly employees, Kehoe says.

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Nonsolicitation agreements prevent employees from trying to recruit clients or staff from their former employers. Confidentiality agreements prevent former employees from disclosing propriety information, such as trade secrets and client data, to a third party. As long as the terms of these documents, which pertain to a length of time and geographic area, are detailed and specific, Kehoe says they are highly enforceable in most states.

“You can’t keep a person from making a living in the same industry, but you can certainly put some teeth into the non-solicitation and confidentiality agreements,” Kehoe says. “It should just be standard practice to have them. Otherwise, you can rely on the good faith, honesty and loyalty of people, but good luck with that in life.”

Richard Lehr, general counsel for the Professional Land-care Network (PLANET), says these types of agreements are particularly useful in the Green Industry, which is perceived to have easy, low-cost entry. While there are generic versions of noncompetes available on the Internet, Lehr recommends business owners have a lawyer create a document specifically for their company that incorporates the nuances of their state



laws. The agreements should be reevaluated annually or whenever there's a change in the business structure, such as with the addition of new locations or services. The terms and conditions should vary based on the type of employee, Lehr adds. For example, managers and sales team members may be restricted from working for specific competitors for two years, while an hourly maintenance worker may only be restricted for one.

"Noncompetes are advisable and necessary to protect a business," Lehr says. "Employers invest time, dollars and training into their employees. For that person to become a competitor is something the employer should limit as much as possible."

Kenneth LaVoie, owner of LaVoie's Landscape Management in Winslow, Maine,

requires employees and subcontractors to sign noncompete agreements. The contract ensures his \$110,000 company has the rights to any potential work a subcontractor encounters while on a LaVoie's Landscape Management job and prohibits subcontractors and employees from doing business with LaVoie's clients, which are all residential, for a period of five years. While LaVoie says it's unlikely his company would have the resources to enforce the agreement, he uses it as a precautionary measure to encourage current and former employees to do the right thing.

"Noncompete agreements are like locks on doors," he says. "They are there to keep the dishonest people in line."

Schappacher is a freelance writer based in Charlotte, N.C.

SAYING "NO" TO NONCOMPETES

Steven Jomides, president of Lawns by Yorkshire in Westwood, N.J., is one contractor who doesn't think noncompete agreements make the best business sense. The \$10-million company, which offers commercial maintenance services, used to require employees to sign noncompetes, but Jomides recently stopped putting as much emphasis on them. He says his philosophy is simple: "If you offer good service and you make your customers happy, regardless of who comes and goes, you should keep your customers."

Jomides says the costs to draft, maintain and enforce noncompete agreements outweighed any benefits his company saw in return. He also found the contracts difficult and time-consuming to enforce. Plus, there was the potential to upset clients if they were to get caught in the middle of a legal scuffle.

"Noncompetes aggravate everyone and, from a business perspective, I don't think it's a good decision," Jomides says. "We hire people who bring work in, and people who leave take work with them. We have come to accept that as part of doing business."



Some experts believe Jomides may have the right idea. A recent *Harvard Business Review* article—authored by On Amir, associate professor of marketing at University of California, San Diego, and Orly Lobel, a professor of labor and employment law at the University of San Diego—reports noncompete clauses are a standard feature of many employment contracts, but they often can be a double-edged sword.

Research shows innovation, productivity and economic growth all are greater in parts of the country where noncompete agreements are not permitted or enforced. The authors also conclude limits on future employment decrease workers' perceived ownership of their jobs and diminish their desires to exert themselves and develop their skills—factors that can be more detrimental to a company's success than the actual loss of the employee.

"Given today's increasingly mobile labor market and the heightened competition in many industries, it's understandable that companies want to guard their talent closely," the authors write. "But if the walls meant to protect human capital diminish the quality of the capital, they may not be worth building."

The Ticker:

MAINTENANCE

Paramount Landscape & Maintenance, a \$3.2 million firm in Chandler, Ariz., was acquired by a private investor Jan. 31. Terms were not disclosed.



Following its acquisition of Knoxville, Tenn.-based **Cortese Tree Specialists**, **Davey Tree Expert Co.** opened seven new branch offices. They are located in Austin, Texas; Baltimore; Chicago; Detroit; Napa, Calif.; Pittsburgh; and St. Louis.

In a deal with undisclosed terms, the **Brickman Group** purchased **Metheny Commercial Lawn Maintenance**, located in Dallas. The acquisition marks Brickman's first M&A move since it was acquired by investment firm KKR in November.