



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Using Restrictive Covenants to Protect A Nonprofit's Assets

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Nonprofit organizations, like most businesses, invest significant time, money and resources in their employees. This investment can take many forms, including employee training and development. When an employee's position involves fundraising, nonprofit organizations provide the employee with the resources to find donors. Nonprofit organizations may also share confidential and sensitive information with employees to assist them in performing their job duties. Such information can include donor records, fundraising strategies, members' and volunteers' names and contact information, and other sensitive and proprietary information.

Well-trained employees and the donor base they help to develop are significant assets that a nonprofit organization wants to protect. It is also natural for nonprofits to want to avoid improper use of proprietary information they have shared with their employees. What legal options do nonprofit organizations have to secure these protections?

Restrictive covenants are an option for nonprofit organizations to consider. Restrictive covenants prohibit employees from engaging in certain competitive activities during their employment and for a defined period of time after the end of their employment. If an employee is not subject to restrictive covenants, the legal restrictions on his or her ability to solicit donors and use information after the end of his or her employment may be limited. Furthermore, as a general matter, an employee owes no duty to his or her former employer to not compete or not solicit his or her old customers.

There are four types of restrictive covenants: (i) non-competition covenants, (ii) customer non-solicitation covenants, (iii) employee non-recruitment covenants, and (iv) non-disclosure covenants. A non-competition covenant restricts a former employee from working for competitors. A customer non-solicitation covenant restricts a former employee from soliciting his or her customers (or donors). An employee non-recruitment or no-hire covenant restricts an employee from recruiting or hiring away his or her former co-workers. Finally, a non-disclosure covenant restricts a former employee from using or disclosing information he or she learned during his or her employment.

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Each of these types of covenants (or a combination of them) may be appropriate for a particular nonprofit organization or for a particular employee within the organization. Of the four, non-disclosure covenants are probably the most commonly used nonprofits. Restrictive covenants should be carefully drafted. If they are too broad and unreasonable, a court likely will not enforce them. Legal counsel can assist in determining what types of covenants are appropriate for your organization and in drafting covenants that courts are likely to enforce.

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