

## **What is a Non-Disclosure Agreement?**

A non-disclosure agreement (NDA), also known as a “confidentiality agreement,” is a contract in which you agree to keep specific information secret or confidential. NDAs are often used by companies to protect trade secrets and business strategies.

## **Why do companies use NDAs?**

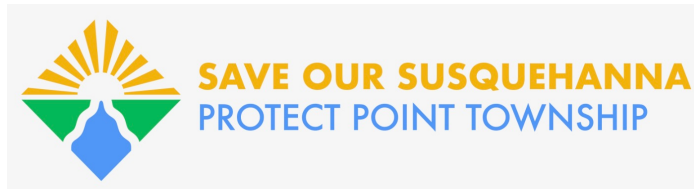
Companies use NDAs to protect their business interests. They are often used to silence or intimidate critics by threatening legal action if these critics share unflattering information.

## **What is usually included in an NDA?**

An NDA will list the parties to the contract (typically you and the company) and will lay out an agreement around keeping information confidential. An NDA usually lists specific types of information, like details about business operations, that you are not allowed to share with anyone, and will often list the types of information sharing that are prohibited. This contract might last for a specified period of time (3 years, for example), or it may be indefinite. An NDA may also include provisions about “indemnification” (who’s responsible for paying the legal bills the result from a breach of the contract), governing law (which state law controls the contract), and exceptions for when the confidential information may be shared.

## **Are NDAs legal in Pennsylvania?**

Yes. Pennsylvania law allows many types of NDAs. But there are some important legal rules for what can or cannot be included in an NDA (see below).



## **What should I look out for in an NDA?**

Because NDAs are contracts, there are certain legal requirements for their form and substance. All of the terms of the contract — the parties, the time period, the scope of the agreement — must be clear and fairly agreed upon. NDAs must offer something in exchange for your promise to keep information secret — this is known as consideration, and could include a payment or something else offered by the company. NDAs should also include a list of exceptions acknowledging when it is permissible to share the confidential information, such as in a legal proceeding or to protect the public interest.

If any of these provisions are missing, it is a good sign that the NDA is unfair or illegal.

## **Am I allowed to negotiate the terms of the NDA?**

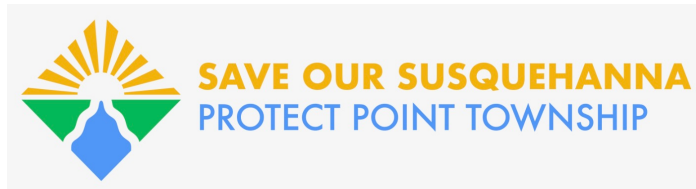
Yes. As with any contract, you must be allowed to negotiate the terms and scope of an NDA. If a company tells you that an NDA is a “take it or leave it” offer, this is an illegal form of coercion, and the contract is likely invalid.

## **What happens if I break an NDA?**

A company can sue you for damages if you break your NDA. The company must prove a) that you violated the terms of the contract by sharing confidential information and b) that the company suffered some form of damage as a result. If this lawsuit is successful, you will be forced to pay the value of the damages.

## **Why should I look out for an “indemnification” clause?**

An “indemnification” clause forces you to pay the company’s legal costs if they believe that the NDA has been violated and they file a lawsuit against you. Such a clause gives a great deal of power to the company and forces you to pay them even if the company does not ultimately win its lawsuit.



## **Do NDAs prevent people from speaking at public hearings?**

They might. NDAs may not prevent people from sharing information in a legal proceeding or in response to a subpoena, and you may also violate an NDA if doing is necessary to serve the public interest (by revealing the existence of a crime, for example). But speaking in public hearings is a bit of a gray area, and a company may argue that doing so violates an NDA and initiate a lawsuit against you.

## **Why are NDAs so risky?**

Companies have all the power when you sign an NDA. They have far more resources to threaten and initiate legal action for a violation of the NDA. Even if you ultimately end up winning a lawsuit based on an alleged NDA violation, the cost and time of defending against a lawsuit can be draining.

## **Should I sign an NDA?**

While the decision is a personal one, signing an NDA is usually a bad idea unless you're compelled to do so for reasons of employment. Think about why a company would want to buy your silence, and whether the price of that silence is worth the obligation to remain silent on an important issue. Also consider the legal risk that will exist so long as you are bound by the contract.