

Industry Index

A glance inside the facts and figures of Greater Baltimore's legal community.



Seventy-seven percent of the people who took the Maryland bar test in July passed, according to Maryland State Board of Law Examiners data.

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Maryland's national ranking in attorneys per capita. The state has 9.4 lawyers per 10,000 residents, according to the Avery Index.

'The non-compete agreement for small businesses is an absolute must.'

- Brooke Tucker
Tucker Capital Advisors LLC

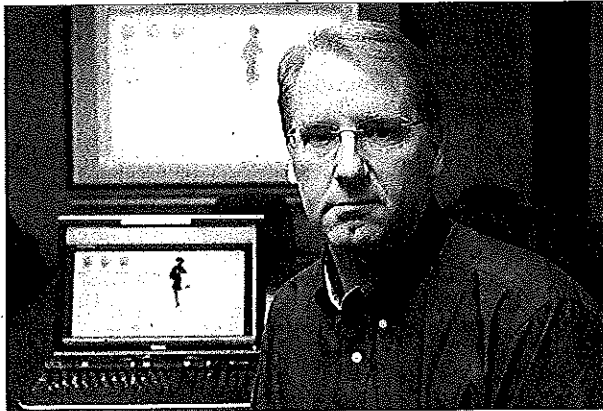


This QR code links to the Maryland Legal Services Corp.'s jobs page. Use your smartphone to access the page and search available jobs for attorneys, paralegals and secretaries.

Competitive edge

Non-competes give businesses piece of mind while protecting their interests

JACK LAMBERT | STAFF



ICS Learning Group President George Gippel uses non-compete agreements to limit who his employees can work for when they leave his tech firm.

Ed Gippel protects his company with a signed piece of paper. Gippel's small tech firm would suffer if one of his employees left and took along his client roster. That's why ICS Learning Group's president limits who his employees can work for when they leave the company. ICS employment contracts state employees cannot work for anyone they met while working at the firm for a year after leaving the company. It also forbids former employees from going after the company's workers or clients for 12 months. "It is kind of like insurance I suppose," Gippel, president of ICS, said. "It has never been problem, but it's there in case there might be one in the future."

More companies are using non-compete contracts to protect proprietary information, client lists and their value to potential buyers as the economy sputters. As a result, lawyers said they have seen a spike in non-compete contract work in the past year as businesses look to prevent their employees from bolting to rival companies. But they also said many com-

panies aren't doing enough on the front end to protect their company's assets. The number of non-compete and trade-secret lawsuits filed in the U.S. spiked 10 percent in 2010 to 2,592 cases, according to data compiled by Boston business attorney Russell Beck. Beck said filings are on the same trajectory as last year even with another month left in 2011. In comparison, the increases in non-compete suits averaged 4.4 percent between 2008 and 2009. Locally, Mark Saudek said his firm has seen more than a 10 percent increase in work related to non-competes in recent years. The partner at Gallagher, Evelius

FAST STAT

10

Percentage increase in non-compete and trade-secret lawsuits filed in the U.S. in 2010 compared to 2009.

Source: Beck Reed Widen LLP

Please see **CONTRACTS**, Page 20

Non-compete Necessities

Here are some tips to consider when crafting non-compete agreements.

1 Pick the right people. If you are making everyone in the company sign a non-compete, you're doing it wrong. Stick to employees you have invested in through training or expertise.

"You don't want employees to take advantage of that training or go to competitor," said Andrew Dansicker, title

partner at the Law Office of Andrew M. Dansicker.

2 Be reasonable. Small businesses often need to identify certain geographic areas former workers cannot compete in to make sure they maintain a spot in the marketplace.

Identify what needs protection and how the business really needs to restrict an individual.

3 Consideration. Under Maryland law, employees do not have to receive a bonus or special perk for signing a non-compete contract. Getting a job is enough of a consideration for signing a contract.

The best contracts, though, often come with a little something extra. A bonus of \$500, for example, is a little thing. But it will strengthen a business' case if it goes to court.

4 Be specific. Most non-compete agreements restrict the solicitation of clients and workers for a year or more. Those are good, but the better contracts are usually much more detailed. Specify which companies an employee cannot work for, or which clients a former employee cannot take.

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NEXT WEEK'S FOCUS

Health Care
Lists: Grocery store operators; Fitness centers

Lawyers want data at their fingertips



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QuickTake with Eliot Wagonheim



page 14

THE EXPERTS
**Speak
Out**

What new law scheduled for Jan. 1 should businesses most be aware of and why?



RONNIE PACHINO
CPA
RS&F

Businesses should plan whether to acquire property, plant and equipment in 2011 or 2012. Qualified property, plant and equipment placed in service in 2011 may be eligible for the 100 percent special depreciation allowance. This allowance is reduced to 50 percent for assets placed in service in 2012.



DAVID CLARK JR.
Partner
DLA Piper

In 2012, stricter standards of judicial review will apply when a special litigation committee asks a court to terminate a [deal] commenced on behalf of a corporation by a minority stockholder. A SLC is often appointed when a majority of directors have a personal stake in the disputed transactions. Firms will need to pay attention to [real or perceived conflicts].

Contracts: Non-competes can protect client lists

From Page 13

& Jones said the industries with the biggest need for non-competes are those with high levels of intellectual property or large client bases. Some of these industries include health care, finance, sales and tech companies.

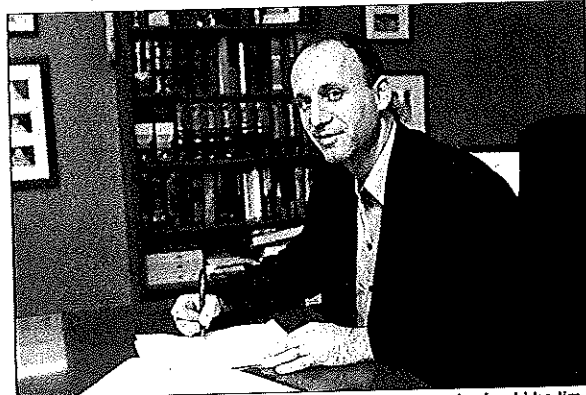
Businesses should craft non-compete pacts with specific restrictions focused on specific employee [see chart on page 13]. Putting those limitations in writing can help ensure their clients and sensitive data remain with them even if an employee leaves.

"A non-compete makes sense for those invested in training or invested in the employee," said Baltimore employment discrimination attorney Andrew Dansicker.

Any business with confidential or proprietary information an employee could walk out the door with needs non-compete contracts, said Harriet Cooperman, a partner at Saul Ewing LLP. The key to a good non-compete is creating a strong enough agreement to stay out of court, she said.

One way to avoid legal battles is identifying which employees need to sign non-compete agreements. Courts often decide the validity of non-compete contracts based on the legitimacy of the interests the company wants to protect. That means if a person does not have access to clients or confidential secrets, then the agreement can be found invalid.

Legal fees can run into the thousands of dollars, and the bad press associated with going to trial can damage a business' reputation, Cooperman said. "In



Attorney Andrew Dansicker says non-compete agreements should be limited to employees who have access to clients or sensitive information.

most instances, businesses don't want to bring the clients into the process," Cooperman said.

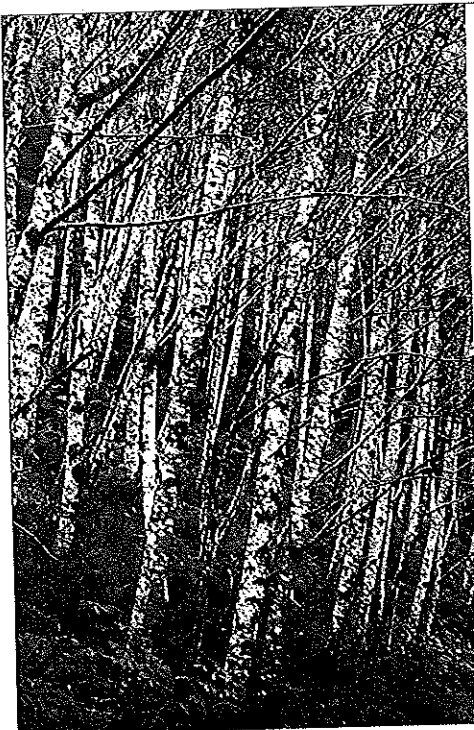
When drafting non-compete contracts, employers should consider how great of a burden to put on their employees, said Jim Rubin, a principal of the Rubin Employment Law Firm in Rockville. He said some businesses include jury waivers. Those are clauses that dictate where the case can be litigated. They also include requirements that employees pay the company's legal fees if they lose the case.

"All sorts of provisions are put in there that are really unfair," said Rubin, who represents employees in non-compete

contract matters.

Keeping the right people in the company with non-competes also helps attract future investors, said S.G. Brooke Tucker, founder of Tucker Capital Advisors. Without non-compete agreements, salespeople and highly skilled employees could bolt after a company is sold. This could lead potential buyers to either lower their price or look elsewhere.

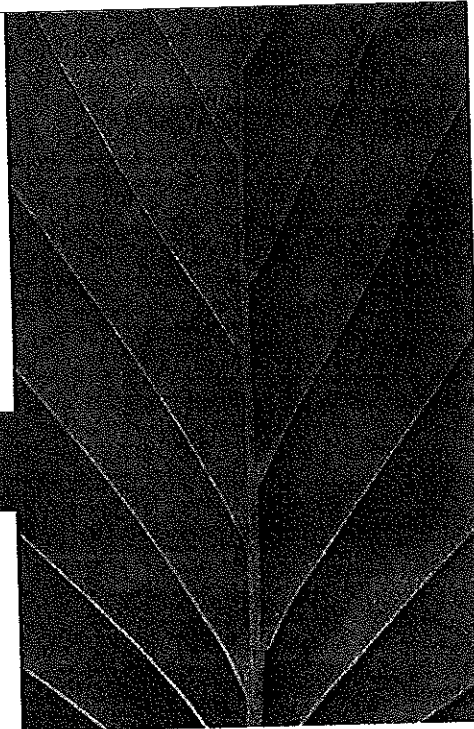
"The non-compete agreement for small businesses is an absolute must," said Tucker who has worked on dozens of merger and acquisition deals as a consultant since 1990. "You won't be able to sell the business without it."



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