



Protections Beyond Non-Competes

October 15, 2026



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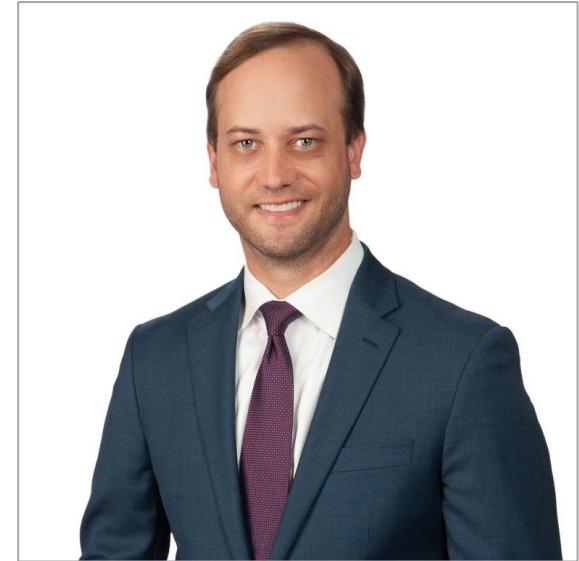
Speakers



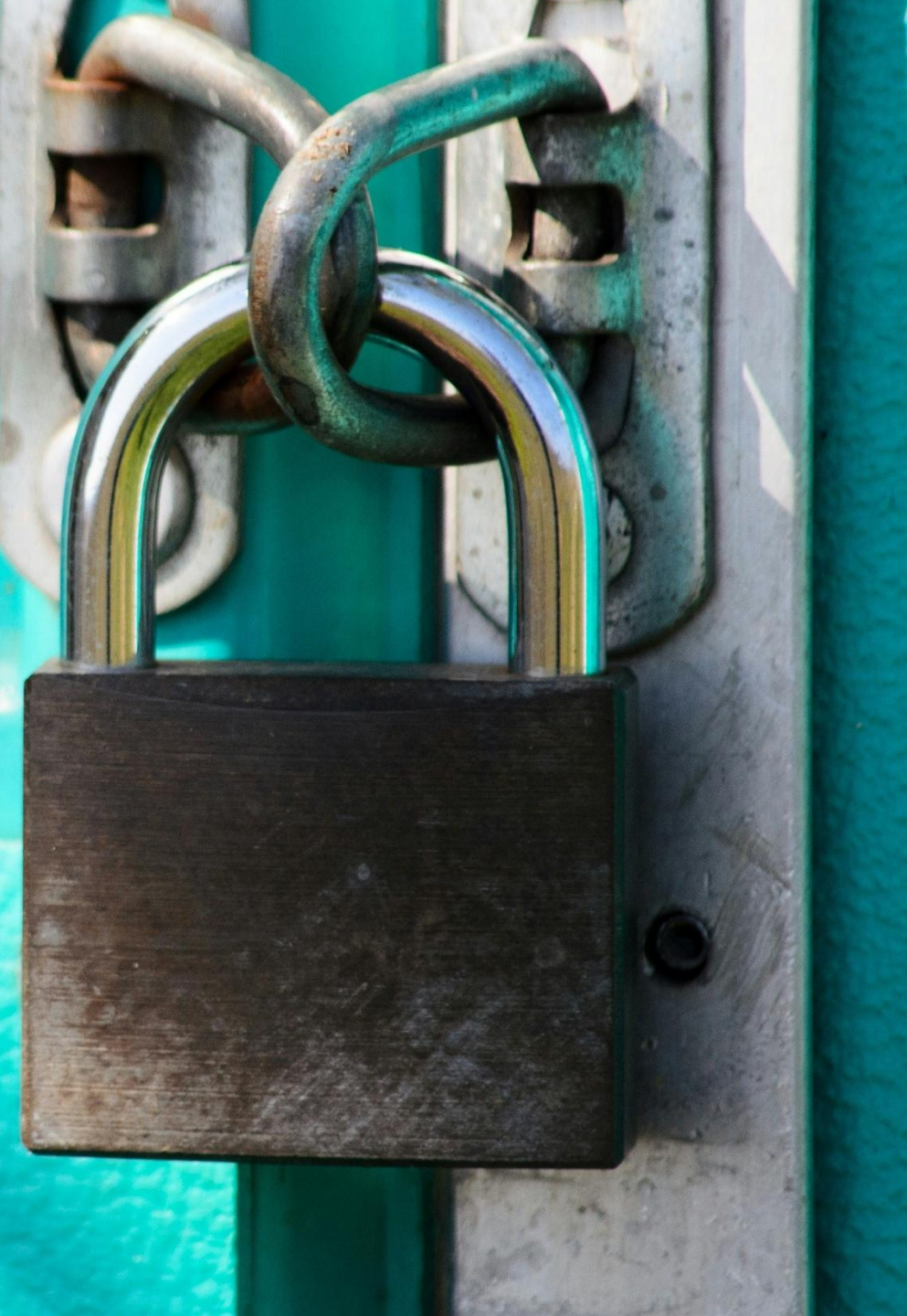
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Agenda

1. **The changing landscape**
2. **Contractual alternatives**
3. **Trade secret safeguards**
4. **An integrated strategy**

The Restrictive Covenant Landscape

STATE LAW IS THE CENTER OF GRAVITY

Federal rule not in effect

- No nationwide FTC ban
- Case-specific federal enforcement remains possible for “overbroad” or otherwise inappropriate covenants (e.g., pet cremation, building services, pest control)
- Notably, however, the NLRB now takes the position that most non-competes are lawful (to say nothing of the alternatives)

State rules diverge

- From outright bans to conditional ones, such as financial thresholds and notice rules, states vary widely for purposes of enforcement
- Florida moving towards greater enforcement
- Choice-of-law and worker location matter

Alternatives also face scrutiny

- “Functional” restraints may count as noncompetes, particularly in certain jurisdictions or under certain circumstances
- Non-disclosure agreements may face scrutiny
- Clawbacks and forfeitures require forethought

Draft for the role, the jurisdiction, and the interest being protected.

Start With the Protectable Interest

THE PROVISION SHOULD BE TAILORED TO THE RISK

1 Information

Trade secrets, product plans, pricing, strategy, succession planning, budgeting, customer intelligence – anything that would harm the business if it fell into the hands of a competitor, nothing that is already publicly available

2 Relationships

Customer goodwill, workforce stability, referral sources, ready access to vendors and suppliers

3 Investment

Training, transition costs, retention incentives, long-term value, investment in inventions

Avoid one-size-fits-all agreements.

The Contractual Toolkit

SELECTIVE, CUMULATIVE, AND ROLE-SPECIFIC

Tool	Primary focus	Typical fit
Confidentiality / NDA	Information	All roles with access to confidential information and trade secrets
Customer non-solicit	Goodwill	Sales and relationship roles
Employee non-solicit	Workforce	Team leaders and recruiters
Garden leave	Transition period	Senior or sensitive roles (or jurisdiction-specific)
Term agreement	Continuity	Defined projects or leadership
Forfeiture-for-competition	Incentive value	Equity and deferred compensation
Training Repayment Agreement Provisions (TRAPs)	Recouping benefit of training	Trainees (but exercise caution)

Confidentiality Agreements That Work

DEFINE • CONNECT • MAINTAIN

1

Define with precision

Use categories tied to the business. Preserve trade secret coverage without sweeping in public knowledge or general skill.

2

Connect to controls

Match the contract to the role, including actual access controls, policies, training, labeling, and incident response.

3

Maintain over time

Refresh for employee role changes, acquisitions, remote work, new systems, and evolving law.

Periodically consider when an update could be helpful, particularly when issuing new consideration (e.g., stock agreements).

Solicitation Restrictions: Draft the Conduct

CLARITY BEATS LABELS

Who?

Customers, prospects, employees, referral sources

What?

Solicit, induce, recruit, service, accept business

Which relationships?

Material contact, responsibility, confidential knowledge

For how long?

A period tied to the interest, area of restriction, and role (and of course, jurisdiction)

Garden Leave and Term Employment

PAY, CONTROL, AND PRACTICALITY

1 Garden leave

Employee remains employed and paid while duties or access are limited. Address benefits, bonus treatment, cooperation, access, and offset issues.

Garden leave has a slightly different meaning in Massachusetts.

2 Term employment

A defined employment period may support continuity, but early-termination remedies must be drafted carefully and assessed under state law.

Key question: Is the arrangement operationally workable, not merely legally available?

Forfeiture-for-Competition

INCENTIVE DESIGN IS NOT A SAFE HARBOR

1

Identify the benefit

Equity, deferred compensation, bonus, or incentive

2

Define the trigger

Competition, solicitation, misuse, or other conduct

3

Test the effect

Does the provision functionally prevent mobility?

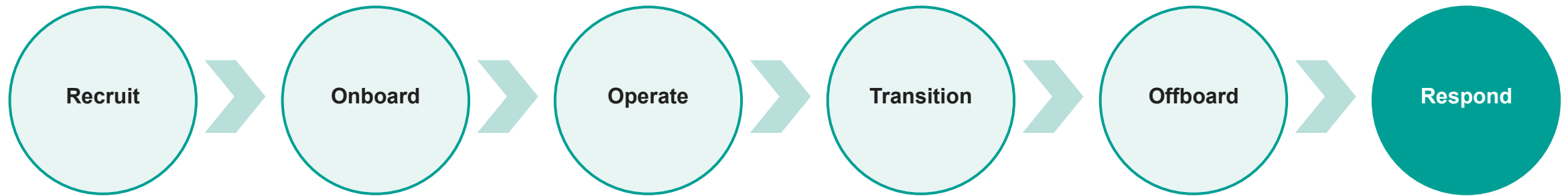
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Calibrate the consequence

Prospective forfeiture, repayment, recoupment, or vesting

Trade Secret Protection Is a Lifecycle

REASONABLE MEASURES SHOULD BE VISIBLE AT EVERY STAGE



Contracts + controls + culture + evidence

Onboarding: Protect Without Importing Risk

CLEAN ENTRY, CLEAR EXPECTATIONS

1

Before day one

Review prior restrictions. Instruct the employee not to bring former-employer data. Document the instruction.

2

At orientation

Execute role-appropriate agreements. Explain permitted and prohibited conduct. Confirm IP ownership and any exclusions.

3

During integration

Limit access to need-to-know systems. Avoid assigning work that invites use of a prior employer's information.

Offboarding: Move Fast and Preserve Evidence

THE FIRST 48 HOURS MATTER

Access

Disable accounts, tokens, forwarding, shared credentials

Assets

Collect devices, media, records, badges, and cloud repositories

Attestations

Confirm return, deletion, ongoing duties, and personal-account review

Forensics

Escalate anomalies; preserve logs and devices before remediation

Relationships

Identify customers, employees, vendors, and projects at risk

A Comprehensive Protection Strategy

LAYER THE PROTECTIONS

Contract | Tailored covenants, IP ownership, confidentiality, incentives

Control | Least privilege, segmentation, DLP, monitoring, retention

Culture | Training, manager accountability, clear reporting channels

Response | Exit protocols, preservation, investigation, calibrated enforcement

Five Practical Takeaways

FOR EMPLOYERS AND HR PROFESSIONALS

- 1 Inventory agreements by state, role, and compensation level.
- 2 Map each restriction to a specific protectable interest.
- 3 Use alternatives selectively; test for functional-restraint risk.
- 4 Treat onboarding and offboarding as evidence-generating processes.
- 5 **Unify Legal, HR, IT, Security, and the business around one playbook.**

thank you

Dan Hart

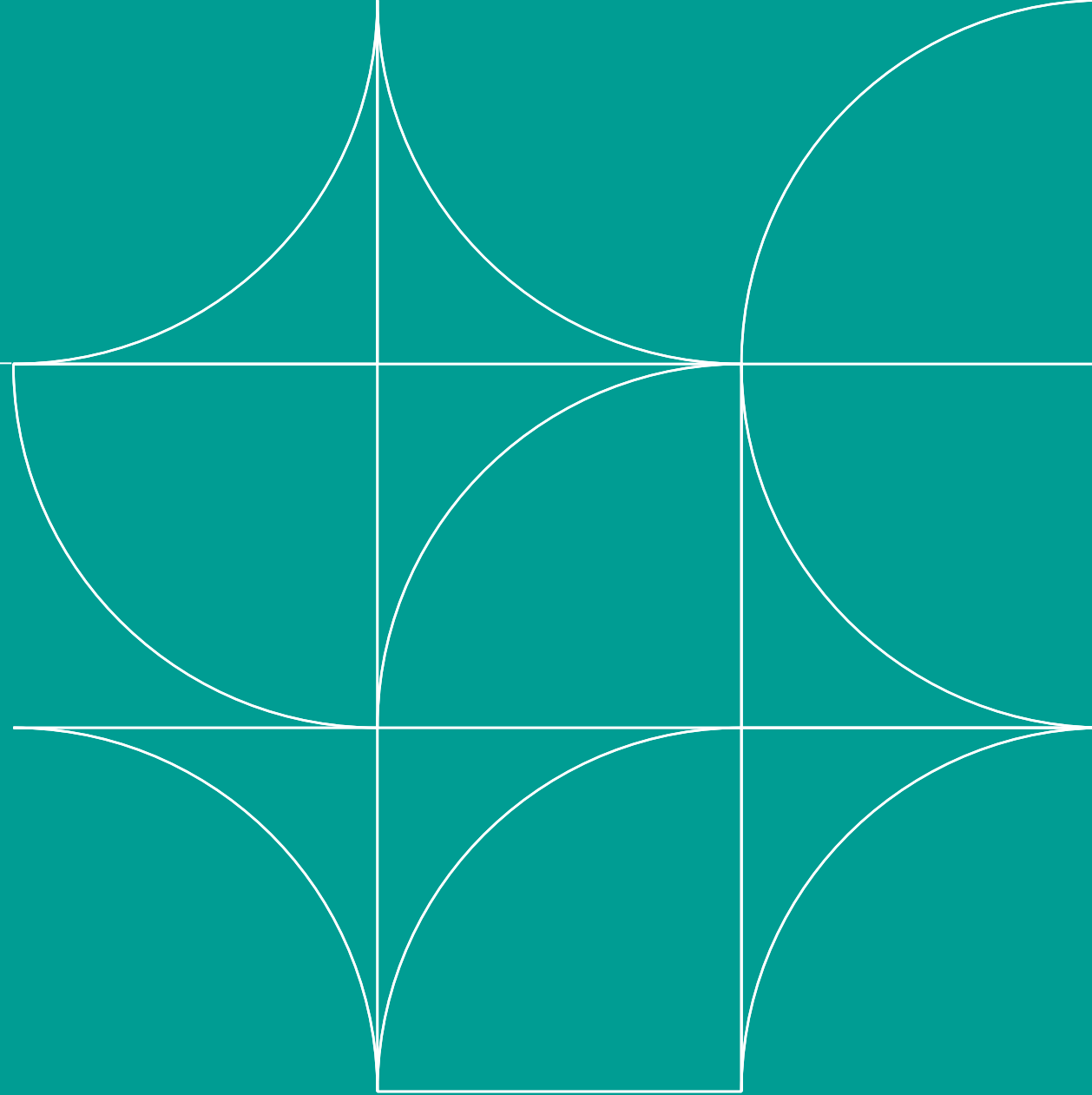
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