

GABB Buyers Confidentiality Agreement Revised

The GABB Forms committee recently revised and improved the GABB G301 Buyers Confidentiality Agreement, using improvements recommended by various members. GABB affiliate member and attorney Gary Whitaker has summarized these changes.

GABB Forms Committee Chairman Nick Nicholson says members will “want to be aware of the changes and be able to discuss this with both buyers and sellers.”

Please see Gary’s summary below:

Your Forms Committee recently revised the GABB G301 Buyers Confidentiality Agreement to include a number of improvements recommended by various members. This agreement is designed to protect a seller who lists his or her business for sale and must make available confidential information to prospective buyers. Each of these prospective buyers should sign the confidentiality agreement before any confidential information is disclosed (including access to the premises where confidential information could be obtained visually or verbally).

The major changes to the new agreement are as follows:

- The duration of the non-use and non-disclosure prohibitions was set at five years for all such information (previously it was for two years, but for an indefinite period for information that qualified as a Trade Secret under Georgia law).
- The disclosure of confidential information by the prospective buyer to its employees, agents and advisors was limited to those who have a need to know the information and who have signed a confidentiality agreement with the prospective buyer that protects the seller from their disclosure or use of such information.
- A provision was added prohibiting the prospective buyer from soliciting any of the seller’s employees to work for such buyer if the transaction doesn’t close.
- The fact that the business is for sale was inserted to emphasize that this fact is confidential.
- The previous agreement required that the confidential information be returned, but some types of confidential information cannot be “returned”

(such as information in emails), so a provision was added requiring such information to be destroyed, and derivative information (such as summaries or analyses prepared by the prospective buyer based on the confidential information) was added to be covered by this requirement.

- The agreement terminates with respect to a buyer when that particular buyer completes the purchase of the business, except as to confidential information personal to the seller (in which case it remains in effect post-closing).

As in the past, you can download the form from the BBMS under “Forms.” In addition, the BBMS site from the Active Listings page allows you to add the Confidentiality Agreement to the Documents Cart and send it to the buyer. We also improved the BBMS Documents Cart form so that it looks like the original form. The output previously changed the format and went to three pages and was not attractive looking to the buyer. The BBMS-generated Confidentiality Agreement now looks professional. We endeavored to keep the form to two pages.

The revised Confidentiality Agreement conforms to normal provisions contained in commonly used Confidentiality Agreements.

Jim Waddell furnished the original ideas for updating the agreement, and Gary Whitaker, attorney, created the document and wrote this summary (except for this sentence!).

Nick Nicholson adds: “Please feel free to contact Gary with any deal questions you may have. Gary is a knowledgeable attorney and has greatly helped the Forms Committee. We like to support those who support us.”

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