

R. MARK HALLIGAN AND RICHARD F. WEYAND, TRADE SECRET ASSET MANAGEMENT 2016
(Weyand Associates, Inc., 2016)

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Trade Secret Asset Management 2016

“What is clear is that the loss of trade secret information is a very real and ongoing problem, and puts the information-driven shareholder value of the corporation at risk. The odds are good that the trade secret information of your company is being stolen as you read this book.”¹

Trade Secret Asset Management 2016, by R. Mark Halligan and Richard F. Weyand provides a comprehensive guide to trade secret management, focusing on the issues surrounding the identification, security and legal defense of trade secrets. Halligan and Weyand consider the impact of the Defendant Trade Secrets Act of 2016 and predict what the implications will be on the future of trade secret law. This book review examines each subject-area of the four-part guide and evaluates the book as a tool for businesses, attorneys and law students to gain a fundamental understanding of trade secret law and information asset management in the digital age.

Co-author R. Mark Halligan is recognized as a leading lawyer in the field of trade secret law, often speaking as an expert on the subject at numerous presentations and seminars

¹ R. MARK HALLIGAN AND RICHARD F. WEYAND, TRADE SECRET ASSET MANAGEMENT 2016, 21 (Weyand Associates, Inc., 2016).

worldwide.² Halligan is a trial lawyer and partner at FisherBroyles, LLP, as well as a professor of Advanced Trade Secret Law at John Marshal Law School.³ Halligan has co-authored *Defend Trade Secret Act (DTSA) Handbook* (Wolters Kluwer, 2016) and *Trade Secret Asset Management: An Executive's Guide to Information Asset Management* (Aspator Books, 2006).⁴ Co-author Richard F. Weyand is president of Trade Secret Office, a trade secret management software company, and is recognized as a technical expert in the field of trade secret security.⁵ Weyand also co-authored *Trade Secret Asset Management: An Executive's Guide to Information Asset Management* (Aspator Books, 2006).⁶

Trade Secret Asset Management 2016 consists of four parts: *The Law, Security, Accounting,* and *The Future*. Part I provides the reader with a foundational knowledge of what trade secrets are and how they are valuable to modern, information-driven businesses. By illustrating the disparity between a company's book value and the value of its stock, the authors demonstrate that the value of information assets, not tangible assets, is what drives shareholder value in modern corporations.⁷ Part I outlines the legally required proofs for successfully asserting trade secret property rights and designates circumstances that may result in the loss of those property rights.⁸

After providing the reader with a foundation in the subject of trade secrets, Part II discusses methods of securing these assets from both internal and external threats.⁹ The authors describe a "Fenced Enclosure Model" to help the reader visualize methods of trade secret theft

² See *Attorneys - R. Mark Halligan*, FISHERBROYLES, LLP (last visited Feb. 22, 2017), archived at <https://perma.cc/G3CT-2N24>.

³ See *Attorneys - R. Mark Halligan*, *supra* note 2.

⁴ See *Attorneys - R. Mark Halligan*, *supra* note 2.

⁵ See Halligan, *supra* note 1 at back cover.

⁶ See Halligan, *supra* note 1 at back cover.

⁷ See Halligan, *supra* note 1 at 18-20.

⁸ See Halligan, *supra* note 1 at 23-54.

⁹ See Halligan, *supra* note 1 at 62-87.

and differentiate between company insiders and outsiders.¹⁰ Interestingly, the authors give a descriptive psychological profile of the inside trade secret misappropriators, derived from their experience in trade secret litigation.¹¹ Part II provides methods for effectively managing security through compartmentalization, digital barriers, monitoring internal and external computer networks, as well as establishing effective communication between management and employees.¹² Part II also addresses “inbound security threats” that occur when a newly hired employee uses a competitor’s trade secrets in the course of their work, thus subjecting their new employer to liability for trade secret misappropriation.¹³

Part III, which covers the accounting element of trade secret management, is the most technical section of the book. This section begins by setting out a four-step process for companies to create a trade secret portfolio including: inventorying and categorizing potential trade secrets, identifying actual trade secrets, and classifying trade secrets.¹⁴ The authors then discuss how companies should incorporate these steps into their practices.¹⁵ Next, Part III designates the proper method of valuating trade secrets and establishes the importance of reporting the valuation for shareholder and investor guidance.¹⁶ Finally, Part III addresses the life cycle of the trade secret and describes how the proper management of trade secrets at each stage is essential to maintaining its security and maximizing its economic benefits.¹⁷

Part IV introduces the recently enacted Defend Trade Secret Act of 2016 (DTSA) and outlines numerous benefits that the new law will provide to trade secret plaintiffs.¹⁸ The authors

¹⁰ See Halligan, *supra* note 1 at 57-58.

¹¹ See Halligan, *supra* note 1 at 100-109.

¹² See Halligan, *supra* note 1 at 88-94.

¹³ See Halligan, *supra* note 1 at 95-116.

¹⁴ See Halligan, *supra* note 1 at 118-127.

¹⁵ See Halligan, *supra* note 1 at 118-127.

¹⁶ See Halligan, *supra* note 1 at 118-136.

¹⁷ See Halligan, *supra* note 1 at 136-144.

¹⁸ See Halligan, *supra* note 1 at 146-153.

emphasize that the statute builds off of the existing trade secret law discussed in Part I of the book, and that the same requirements exist for establishing trade secret rights.¹⁹ The authors conclude that the DTSA will create uniform trade secret protection throughout the United States, alleviate procedural hurdles that occurred under state trade secret laws, and provide valuable safeguards against international trade secret theft.²⁰ Finally, Part IV promotes the computer automation of trade secret management as a practical and cost-efficient asset management solution for companies.²¹ The authors conclude that automation will simplify inventory, increase security, and boost the likelihood of successful trade secret litigation if necessary.²²

The objective of *Trade Secret Asset Management 2016* is to explain the high value of trade secrets to modern businesses and to introduce policies and procedures for prevention of misappropriation. The guide provides business owners, employees and attorneys with a working knowledge on the subject of trade secrets and informs trade secret owners on the most recent developments in information asset management.

The guide breaks down trade secret management into the four key subject areas, each building off the previous and the last addressing the most recent changes in the field. The guide discusses the relevant subject matter in the body of the book and provides the supporting statutes and cases in the appendix. This feature is particularly valuable to lawyers, who will likely need to reference these sources. This is also an effective way to structure a book that is likely to have a non-lawyer audience, because it allows the reader to retain essential information and reference the supporting material as they chose.

¹⁹ See Halligan, *supra* note 1 at 152-153.

²⁰ See Halligan, *supra* note 1 at 152-153.

²¹ See Halligan, *supra* note 1 at 154-161.

²² See Halligan, *supra* note 1 at 154-161.

Despite its technical content, the guide is written in a very succinct and readable manner. The authors illustrates key concepts with real-world scenarios, which will likely drive home the their points to readers in the business world. There is language used throughout the book that also indicates that the authors are speaking directly to trade secret owners, and therefore the book seems to be directed toward business owners and corporate executives. Overall, the book is accessible to readers of various backgrounds and doesn't require any technological, legal, or business education to understand the material.

Although this guide speaks primarily to business insiders, I would recommend this book as a concise source on trade secret law for lawyers, law professors and law students. The guide accomplishes its objective of providing the reader with an overview of trade secret law, security, and accounting. Additionally, it connects the aforementioned topics with recent advancements in the law and computerized asset management. With the continuous impact of developing technology and changing laws in the field of intellectual property, *Trade Secret Asset Management 2016* provides an excellent source for legal professionals to stay current.