

19. Dissolving or Selling a Business

Selling or dissolving a business may pose many legal complexities depending on a number of factors, such as the form of business, whether the business is jointly owned and the need to address the tax matters and licenses associated with the business. For this reason, this is an area where professional legal support is often needed. This chapter highlights high level issues to consider.

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Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

What are Common Forms of Business Organizations?

State and federal laws govern businesses, and outline various forms of business organizations. For the purposes of federal law, the most common types of business entities are: (1) the sole proprietorship; (2) the partnership; (3) the corporation; and (4) the limited liability company.

The majority of small businesses begin as sole proprietorships. As a result, this chapter is tailored to sole proprietorships. In a sole proprietorship the owner faces unlimited liability for all debts incurred by the business. On the upside, there is relatively little paperwork required in order to start and dissolve a sole proprietorship. Additionally, all income derived from the business flows directly to the owner and is reflected on the owner's personal tax returns. As a result sole proprietors may need to file several tax forms including but not limited to:

- [Form 1040](#) (an Individual Income Tax Return);
- [Schedule SE](#) (Self-employment Tax);
- [Form 4562](#) (Depreciation and Amortization);
- [Form 8829](#) (Expenses for Business Use of Home; and
- Employment tax forms.

When facing potential deportation, you should check with a tax attorney or specialist to make sure they have filed the correct forms. Filing the wrong forms can be seen as tax evasion or fraud which are deportable offenses and which could affect future re-entry.

In a **partnership**, two or more individuals run and operate a business, and normally each partner has unlimited liability for the debts and obligations of the partnership. There are three types of partnerships: The general partnership, limited partnership and limited liability partnership. In a limited liability partnership, each individual partnership has a reduced amount of liability. Instead the limited liability partnership as a whole maintains liability.

In contrast, a **corporation** is a business entity that has separate legal standing from its owners. The defining characteristic of a corporation is that it has limited liability for its owners – specifically, that its members are not personally liable for the debts and obligations of the corporation. This chapter does not focus on corporations because they are not common in the small business context, but it is still important to seek legal support when selling or dissolving a corporation.

A **limited liability company (LLC)** is a business structure whereby the members of the company cannot be held personally liable for the company's debts or liabilities. LLCs are essentially hybrid entities that combine the liability protection of a corporation and the tax characteristics of a partnership or sole proprietorship.

What are the Considerations When Selling or Dissolving a Sole Proprietorship?

You must take into account several considerations when you wish to sell or dissolve a sole proprietorship because all states and localities have different requirements for terminating sole proprietorships. Additionally, it is wise to check with an attorney familiar with the requirements of the Secretary of State, county, city and small business administration who knows the appropriate steps to take.

Dissolving a Sole Proprietorship

Dissolving an individual business as opposed to selling the business may be preferred when there are time constraints. Closing a sole proprietorship does not require negotiations or transfers. As a result it may be faster than selling a business. In either case, it is important to keep accurate records and set aside a reserve for unexpected debts, taxes and bills.

When dissolving a sole proprietorship, the owner must notify:

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| (1) Secretary of State; | (5) creditors and suppliers; |
| (2) the county and city clerk's office; | (6) customers; |
| (3) local, state and federal tax authorities; | (7) employees; |
| (4) licensing entities and trade associations; | (8) landlords and equipment lessors; and |
| | (9) banks. |

However, unlike many other businesses there is no need to officially register the dissolution of a sole proprietorship.

Nonetheless, there is no shortage of tasks to complete before dissolution. Owners should complete all final orders, notify customers, and pay outstanding debts. It is just as important to cancel registration, permits licenses and business names. Employment and labor laws may also dictate how to notify, terminate and pay employees and file related tax paperwork.

Owners who are facing deportation should consider what assets they can sell after dissolving the business, such as equipment or merchandise. After selling assets, owners should close all business bank accounts and credit cards.

Selling a Sole Proprietorship

Selling a sole proprietorship is advantageous when time constraints are not present, when a buyer has already shown interest, or when the business has a particularly high valuation. The process for selling a sole proprietorship may be complicated and it is recommended that you obtain the advice of an attorney and business broker if you wish to sell your business.

You must first consider the valuation of your business taking into account the licenses, leases, and other assets of the business. As a procedural matter, you must reflect the sale on all tax forms. For federal purposes, you must document the sale on the [Form 8594](#) (Asset Acquisition Statement). In some states, such as Texas, an individual can dissolve, and a new owner can register the business on sales tax forms. In Wisconsin, if the business name is not the new owner's full legal name, the new owner must file a "doing business as" application. There are many state specific variances.

If you have a mortgage or lease on the business property or on equipment used for the business, you should also transfer these to the new owner and obtain releases from the lenders and lessors. Failure to do so could result in you being responsible for payments or injuries long after you have left the country and are no longer running the business.

If the business is worth less than its debts, you might consider initiating a state law remedy usually called an "assignment for the benefit of creditors." This involves transferring all of the assets to an assignee (liquidator) who sells the assets and distributes the proceeds based on how much each creditor is owed to creditors who file

claims after being notified. In most cases, the assignee is a person or entity of the business owner's choosing, but they must be acceptable under state law and have the necessary qualifications. This process is most often used for businesses (corporations or limited liability companies) as state law typically will not provide an individual or sole proprietor with a “discharge” of their debts. While the owner still may have personal liability for any unpaid trust fund taxes, creditors may be less likely to pursue collection efforts.

What Are the Considerations When Selling a Jointly Owned Business?

In a jointly owned business or partnership, it is critical to have open dialogue with the co-owner. If one of the parties wants to remain in business, the parties should read their agreements and consider the co-owner's right of first refusal, consent or notification rights and change of control procedures.

Co-owner's Right of First Refusal

In general, a right of first refusal is the right of a person to buy something before the offer is made available to others. A right of first refusal is often stated in an agreement between the business owners. Thus, the parties will need to refer to their agreements. If your agreement with your co-owners contains a right of first refusal provision, you must offer to sell your share of the business to the co-owners before offering it to anyone else.

Co-owner's Consent and Notification

Even if the co-owners do not have, or decide not to pursue, a right of first refusal, they may still want to have some control over who gets your share of the business. Before selling your interest, you should check to see if the owners' agreement requires a seller to get consent from the other co-owners. The agreement may at least require you to tell the co-owners about the sale. If provisions like this exist in the contract, you must abide by them.

Change of Control

Furthermore, if you and others jointly own the business and you wish to sell your share, you should determine whether any contracts related to the business require notification to anyone upon a “change of control.” A change of control can occur when a business owner sells their portion of the business. For example, some contracts require that upon a change of control, a business owner, before selling his or her interest, notify the bank that loaned money to the business, the bank that holds the business’ mortgage, or any entity that gave a license to the business. If your contract contains a change of control provision that is triggered by the sale of your interest, then you must abide by the terms of that provision.

Checklist: Dissolving or Selling a Business

- Decide if you want to dissolve or sell your business. Depending on the type of business, dissolving your business may take less time.
- Once you know what you want to do with your business, it is best to hire an attorney as soon as possible to help you with the following steps.
- Determine what type of business you own:
 - Sole Proprietorship – single owner with full liability of costs incurred by the business.
 - Partnership – two or more individuals run and operate the business and each has full liability of costs incurred by the business.
 - Corporation – business entity that has separate legal standing from its owners.

Dissolving a Business (Sole Proprietorship)

- If dissolving a business, check requirements of your state, locality, and small business administration in order to determine what steps must be taken.
- Notify your:
 - Secretary of State;
 - County and City Clerk's office;
 - Local federal tax authorities;
 - Licensing entities and trade associations;
 - Creditors, insurers and suppliers; and
 - Customers.

- Pay all bills and debts;
- Abide by employment laws
- Keep records for tax purposes.

Selling a Sole Proprietorship

- It is best to first get the advice of an attorney and a business broker.
- You should consider how much your business is worth. To do this take into account the licenses, leases and other assets of the business etc.
- You must document the sale on the [Form 8594](#) (Asset Acquisition Statement).
- There are probably state filing requirements as well.
- In the sale make sure to transfer all mortgages or leases on the business property or on equipment used for the business.

Selling a Jointly Owned Business

- You should speak to your co-owner early to determine if he or she wants to dissolve your company as well.
- If your co-owner wants to continue to own the company, look to the agreement to see if your contract has a right of first refusal, consent or notification rights, or what change of control procedures are necessary.
- If any of these terms are present you must abide by them.