

Closing a Business Checklist

This **checklist** outlines key business and legal issues that should be considered when advising clients who voluntarily close a private U.S. business. The issues addressed in this **checklist** include preliminary matters, such as strategies to accelerate the collection of the outstanding accounts receivables, selling off inventory and notifying customers, employees and creditors of the proposed closing, as well as the actual **winding up** of the **company's** business affairs, such as conducting layoffs, concluding commercial contracts, resolving any open intellectual property, real estate, and tax issues and, lastly, arranging for the **company's dissolution**.

Preliminary Considerations

- **List assets and take inventory.** This is essential where an independent business valuation will be undertaken. Even without a business valuation, however, this is a necessary step toward filing the business's final tax returns.
- **Where appropriate, get a business valuation.** A valuation, while costly, may prevent future disputes from arising among the business's owners and provide evidence justifying the figures used on the business's final tax returns.
- **Accelerate collection of outstanding accounts receivable (i.e., via personal e-mail and calls, discounts, letters from counsel for delinquent customers, using a factor for hard to collect accounts, etc.).** Before sending out a general going out of business notification, strongly advise your client to collect receivables early, both on those receivables that are not yet due, as well as receivables currently overdue. Advise your client not to wait—it's always much harder (even impossible, in some cases) to collect receivables once they've announced that operations will cease. Customers who owe your client money will have far less incentive to pay once they learn that the existing commercial relationship is about to be terminated.
- **Notify customers and satisfy outstanding customer commitments.**
 - o Arrange for return of customer deposits and advance payments for goods not delivered or services not yet rendered.
 - o Instruct client to fulfill all outstanding contracts or negotiate for early termination. Where the contracts contain cancellation clauses, exercise the right to cancel and pay any pertinent cancellation fees, where possible.
 - o If an agreement cancellation fee is excessive or if client is unable to pay, call the customer, explain the client's situation, and ask the customer to voluntarily agree to end the contract and waive the cancellation fee.
- **Sell off inventory.**
 - o Arrange "blow-out sale" where client is not yet ready to tell customers, employees and suppliers about plan to close.
 - o Conduct subsequent "going out of business" sale -- after initial "blow-out sale" and provide further discounts for the "going out of business" sale.
 - o Use eBay and craigslist to sell excess inventory.
 - o As a last resort, sell surplus inventory by pallet or truckload, either online (i.e., liquidation.com) or through a liquidator or discount outlet.
- **Notify trade and secured creditors, lenders and service providers.**
 - o Trade and other unsecured creditors
 - Advise when last delivery to client should be made.
 - Where possible, arrange for return of excess goods to suppliers.

Closing a Business Checklist

- Notify creditors when and how payment will be received for previously purchased goods.
- Send certified letter to each creditor announcing business closing and requesting receipt, within a specified period of time, of all remaining claims for payment and that claims not received by the deadline will not be honored.
- Include list of information that creditor must send to file and perfect a claim and mailing address to which creditor must send the claim.
- o Secured creditors
 - Advise creditors of client's proposal for return of collateral and satisfaction of any deficiencies (for example, where client is still making payments on a loan for a company car, specify either voluntarily surrender of vehicle to lender or sale of vehicle with lender receiving the proceeds).
 - Where a sale is intended, check with lender to determine lender's requirements to get lien on collateral released.
- o Lenders
 - If bank doesn't call loan immediately, provide lender with client's payoff plan.
 - Where right of setoff in favor of lender exists under loan documents, provide lender with assurances of intent to payoff loan to prevent seizure of amounts in any client bank accounts.
 - If debts, such as payroll taxes or other personally guaranteed debts exist, arrange for them to be paid off before notifying the bank of the impending closure.
 - If lender has a security interest in client's fixed assets or accounts receivable, provide lender with opportunity to examine the assets (and client's financial statements) to reassure lender that such assets are both physically secure and of sufficient value to cover the debt owed, in event client is not able to repay that debt.
- o Service Providers
 - Provide service providers (such as utilities and waste haulers), with notice of final day services will be required; include instructions on how they can collect payment for their final bills.
 - If client has signed long-term contracts with service providers (e.g., credit card processors and payroll providers), provide sufficient notice of the cancellation to avoid early termination fees.
 - Arrange to have client deposits with utilities and other service providers refunded to client.
- o Insurance carriers
 - Determine whether client's insurance policies cover past acts or need to be kept in force for a period of time after the closing in case client is sued.
 - If there is a pending legal threat, put insurance company on notice about it; advise client that hiding covered legal issues when winding up coverage can cause coverage to fail if litigation subsequently ensues. where it is deemed that continuing the liability policy post-closing is unnecessary, provide a written notice of cancellation to the insurer, sent certified mail, return receipt requested. Where a refund of unused premium is due, provide insurer with the address where client can be reached after the business closes.

• **Terminate real estate and other commercial leases.**

- o If a lease contains provisions allowing early termination of the leasehold, give the lessor notice of the intent to terminate, as well as the targeted termination date, as far in advance as possible and in the manner required by the lease agreement
- o Where the contracts contain cancellation clauses, exercise the right to cancel and pay any pertinent cancellation fees, wherever possible.

Closing a Business Checklist

- **Notify and pay employees.**

- o Issue WARN Act notice to employees, where applicable.
- o Offer stay bonuses to those employees deemed essential to the closing process to induce them to stay until conclusion of the winding down process.
- o Arrange for payment of final employee paychecks on last day of work (include payment for accrued, but unused, vacation days or other paid-time off, as required by state law).
- o Issue final wage and withholding information to employees on Form W-2, Wage and Tax Statement, by January 31 of the year after business closes.
- o Report withholding information to the IRS using Form W-3, Transmittal of Income and Tax Statements. (restaurant businesses must also file information on tip income on Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips).

Shutting the Business Down

- **Arrange for the sale or other disposition of any remaining business assets.**

- o Where the business owns real estate or vehicles, hire brokers to assist in their sale or other disposition.
- o Consider sale of the remaining inventory via:
 - Individual, negotiated sales to interested parties
 - Sales at an auction
 - Sales to a local consignment store
 - Sales of items online
- o Arrange to pay, up through the date of their sale or other disposition, the final taxes due on any owned real estate and personal property.
- o Determine how to distribute, to the business's owners, any property remaining after all sales and disposal efforts have been concluded.

- **Cancel bank accounts and credit cards.**

- **Cancel subscriptions and memberships in trade associations.**

- **Satisfy all tax obligations.**

- o Federal Payroll, Disability and Unemployment Taxes
 - Make final federal payroll tax deposits (i.e., income tax withholding, social security, Medicare, and FUTA taxes).
 - File final employment tax returns.
 - Where necessary, negotiate with the IRS. If the client owes the IRS (or state or local tax authorities) more than the client can afford to pay, attempt to satisfy the obligation through an offer in compromise or installment payments.
- o State Payroll, Disability and Unemployment Taxes
 - Make final state (and, where applicable, local) income tax and state disability (SDI) withholding deposits, along with final state unemployment tax deposits.
 - File final state versions of income and disability withholding reports, as well final report covering unemployment taxes; mark all reports as "FINAL."
- o Sales Tax

Closing a Business Checklist

- File all required final state sales tax forms; write “FINAL” across the top of the form(s).
- Pay all sales taxes previously collected from customers.
- Speak with pertinent state agency(ies) and find out how to close sales tax account(s).
- o Final Income Tax Returns
 - Sole proprietors should report income and expenses, including information on gains or losses, on Schedule C of Form 1040 and file return by April 15th of the year after the business has been closed.
 - Partnerships and limited liability companies should file Form 1065, U.S. Partnership Return of Income, checking the box indicating that it is the final return.
 - Corporations should file Form 1120 for C corporations and Form 1120S for S corporations, checking the box indicating that it is the final return. Also, once the business is dissolved as a matter of law, the corporation should also file IRS Form 966, Corporate Dissolution or Liquidation, to report its dissolution.
- o Contractor statements. Issue payment information on Form 1099-MISC, Miscellaneous Income, to all non-employee contractors and other freelancers. Report information from Form 1099s to IRS using Form 1096, Annual Summary and Transmittal of U.S. Information Returns (alternative, file the 1099-MISC forms electronically).
- o Pension plans. Terminate any pension plans. Regardless of the type of plan, notify the financial institution running the plan that the plan has been frozen and no more contributions will be forthcoming. Savings incentive match plans (SIMPLE) will require postponement of the shutdown until the end of the calendar tax year (i.e., as a matter of law, the business is required to continue to fund the plan until the end of the year).
- o Taxpayer IDs.
 - Federal IDs - Cancel all Federal employer identification and other federal and state identifying numbers. (Note: the IRS will not cancel EIN; however, the IRS will deactivate the business account). To deactivate, notify the IRS in writing sent to the following address: Internal Revenue Service, Cincinnati, OH 45999. Advise that business is closing and request that the IRS close the account; include the complete legal name of business, the name of the business's owner, the EIN, and the business address. All tax returns due must be filed before the IRS will close the account.
 - State employer tax and other IDs and business tax accounts. Contact state tax agencies to determine what forms, if any, are required to be filed (e.g., notice of discontinuance). All tax returns due must be filed before a state tax agency will close the business's accounts.
- **Cancel state, county and municipal permits and licenses.**
- **Provide post-closing contact information with former business contacts, colleagues, and employees**
- **Distribute any remaining assets.**
 - o Sole proprietorship: Owner gets all monies (and other assets) left over after all debts and other obligations have been satisfied
 - o Partnerships and limited liability companies: Each partner gets paid an amount equal to what's in their capital account after all debts and other obligations have been satisfied and all remaining assets have been sold or otherwise liquidated. If there isn't enough left to do that, the remaining money (and any other assets) are distributed to the partners based on the relative size of each partner's capital account to the whole.
 - o Corporations: In the case of C corporations and S corporations, the remaining funds are distributed to the shareholders on a pro rata basis, according to the amount of shares each shareholder holds.

Closing a Business Checklist

• Dissolve the corporation, limited liability company or partnership.

o While not required for a sole proprietorship, a meeting should be held and a vote taken approving dissolution of the business (for more information regarding entity dissolution, see [Dissolution of General Business Entities State Law Survey](#)).

— Dissolving a Corporation. Call a meeting of the board of directors and vote to formally dissolve the corporation as set out in the corporate bylaws or articles of incorporation. As a rule, it usually requires a two-thirds or other form of supermajority vote to dissolve a corporation. In some instances, a unanimous vote may be required. However, it's essential that you consult not only the pertinent state statute, but the corporation's charter, bylaws and shareholders' agreement, if any, before convening the meeting where the vote will be taken.

— Dissolving a limited liability company. A formal vote by members of a limited liability company on a dissolution resolution is required to dissolve a limited liability company. Follow the procedures set out in the operating agreement. Some agreements may require a simple majority vote, while others require a two-thirds or other supermajority vote. A few may require a unanimous vote.

— Dissolving a Partnership. Partnerships don't have to have a partnership agreement; however, if one exists, follow the procedures set out in the partnership agreement in arranging for the dissolution. In the absence of a formal partnership agreement, it is usually easy to dissolve a partnership, merely requiring that a single partner trigger the dissolution simply by giving written notice to the others that they are leaving.

o Once approval has been obtained, file the required forms (e.g., a certificate of dissolution).

o For certain kinds of partnerships (e.g., limited liability partnerships), limited liability companies and C and S corporations, the dissolution document may need to be filed with pertinent state's Secretary of State's office or Corporation Commission, as applicable. All stock certificates or other physical representations of membership or ownership interests should be collected by the company and kept with the business's corporate or company business records.

o While most business owners will be able to wind up the company's business (and at the same time protect their own personal assets) without filing for bankruptcy, if the client's business has significant debts (and creditors who won't settle for less than they are owed), a filing with the bankruptcy court under Chapter 7 of the U.S. Bankruptcy Code may be the only viable option.