

North Carolina Law Life

When It's Time to Close the Doors: Dissolution FAQs

By: Donna Ray Chmura. *This was posted Wednesday, February 10th, 2010*

A number of people have called recently with questions about closing a fledgling business before it has really taken off. This breaks my heart, but I thought it would be a good time to review what needs to be done to close a North Carolina business properly, regardless of its longevity.

How do I close my business? If you formed an entity, you must vote to dissolve the company, pursuant to your bylaws, operating agreement, operating documents or appropriate statute.

Then you can either: 1) file Articles of Dissolution with the Secretary of State yourself, 2) have an attorney prepare and file these for you or 3) just stop filing your annual reports with the Secretary of State. After 5 years, the company will be administratively dissolved.

Is there something I need to do with the Department of Revenue? Some states require a tax certificate or tax clearance document indicating that the entity is current on its state taxes before it is allowed to be dissolved, but North Carolina does not require this. If you are a sole proprietor or a general partnership, you can simply stop doing business. Either way, the company or the owner may still be liable for the debts of the business.

Do I need an attorney? If you have signed any contracts (and especially if you have given personal guarantees), it is wise to work with an attorney to dissolve the business to protect the owners from personal liability and to assess the liabilities. There are some additional steps we can take to protect the company and its owners from the creditors of the business by shortening the time in which creditors must file a claim for payment. We can also negotiate to get you out of contracts early.

It also may be beneficial to review whether a bankruptcy filing would be a good idea. It is possible to close down the business operations, but keep the entity active so that it is available for a future activity. This does require some risk/benefit analysis from your accountant and attorney, and would be most appropriate for a fledgling business than one with business activities.

I never generated any revenues. Do I still have to file a tax return? This will depend on your individual situation, but the conservative view is that if you obtained an EIN, the IRS will be looking for a return. Some accountants advise not filing a return, and if the IRS notices sometimes a mere conversation will suffice and sometimes a "zero return" is needed.

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Otherwise, the S-Corp must file (both federal and state) tax returns. The LLC or partnership would only file a federal tax return if the entity receives income or incurs expenditures treated as deductions or credits for federal income tax purposes. If the entity is required to file a federal tax return, it will be required to file a North Carolina tax return as well.

Individuals (sole proprietors) may still be able to deduct the start-up expenses. Check with an accountant.

What about losses? Check with your accountant, but owners of eligible small businesses may be able to amend their personal or company tax returns for the previous 5 years to apply certain losses against income earned during those years.

What else should I do?

- Cancel all services.
- Cancel all licenses, registrations and permits.
- Cancel insurance policies, but make sure of coverages first.
- Pay all taxes and debts.
- Notify creditors, employees and customers.
- Sell your inventory, equipment or other assets.
- Close all bank accounts in the business name.
- Keep your records in an organized manner for at least seven years.

While these steps may sound simple, the process will be very emotional, and a mis-step can make it that much worse. If there are significant assets and liabilities, money on professional advisors will be well spent.

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