



15 Steps to Winding Down a Virginia Small Business

The process of closing a Virginia small business can range from very simple and straightforward to extremely complex, expensive, and time consuming, depending upon the surrounding facts and circumstances of the business. Just reaching the decision to dissolve a small business can be a painstaking process. Tough questions to ask yourself include:

- How long have expenses been exceeding revenues, and have my attempts to turn the business around made any difference?
- How much personal credit card debt have I incurred in the past year in order to pay business expenses?
- Is work-related stress having a negative impact on my personal health?
- Is the business experiencing a temporary setback or is there a more deep-rooted problem not likely to improve?
- Are key employees leaving to pursue other opportunities (if so, why)?
- Could I plausibly sell my business to a third party?

Set forth below are 15 steps to promote an efficient dissolution of a small business. Remember, you do not have to do this alone! Your legal, accounting, and financial advisors can provide valuable insight and assistance to help you navigate the process.

- 1. Read the Governing Documents of Your Business Entity.** The first step in this process is to review your company's formation documents to confirm what, if any, voting and approval requirements must be satisfied to approve the decision to dissolve the business. If you read the documents and remain unsure of what is required (or if you never got around to adopting corporate bylaws or an LLC Operating Agreement, contact your business attorney to ensure that all relevant decision-makers are on board with the decision and all requirements are met in order to properly memorialize the decision to dissolve.

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- 2. Develop a written plan or checklist for an orderly and strategic shut-down.** Planning how to liquidate assets, pay creditors, close customer accounts, terminate staff, and other details will relieve some of the stress on you and make the process of dissolution more manageable. There are helpful resources available online through the Small Business Administration (“SBA”) and the Internal Revenue Service (“IRS”)
- 3. Notify your team.** Deciding when to tell your staff about the closure of your business can be a tricky situation. Sharing this information too early could cause intense anxiety as employees worry about finding new employment. There is also danger in waiting too long—if your employees have been loyal to you and your business, they may feel betrayed and emotionally “check out” as they begin searching for new opportunities. An effective strategy will often result in some senior level staff being notified earlier in the process than others in order to help out with logistics. The main point is that making the announcement to employees can be a complicated (and stressful) process, and it requires careful consideration.
- 4. Consider bankruptcy options.** Some business owners may want to consider filing for bankruptcy either at the business or personal level (or both). Most business owners mistakenly believe that they only need to file for business bankruptcy to discharge business debts. However, if an owner signed any personal guarantees for business debts, then creditors can personally come after the owner personally even after the entity files for business bankruptcy.

Unfortunately, personal guarantees are a common reality for most small business owners. Bank loans, commercial leases, and franchise agreements are just a few examples of business contracts that typically require personal guarantees from the business owner. If you are a small business owner that is personally liable for any business debts that you are unable to pay, you should first try to negotiate some form of settlement and release with your creditors (depending upon the facts and circumstances, creditors will often agree to accept a reduced payment to settle the debt rather than get caught up in bankruptcy proceedings and risk recovering even less). If your creditors are unwilling to work with you, then speak with your accountant or a bankruptcy attorney about bankruptcy options. To be clear, bankruptcy has its downside and should be viewed as a quick and easy solution. Before choosing that route, take a detailed inventory of all your business assets ranging from customer lists to office equipment. Take into consideration anything of value that could be liquidated to generate cash to pay off outstanding debts.
- 5. Liquidate your business assets.** Office equipment, inventory, and customer lists can be sold for cash that can be very helpful in paying down business debts and covering dissolution expenses.
- 6. Collect outstanding accounts.** After announcing the dissolution of your business, it may become more difficult to collect outstanding payments from customers. Therefore, before announcing the dissolution of your business to customers, develop a plan to collect unpaid accounts. Some possible strategies include offering discounts for immediate payments, calling account managers directly, or personal visits to customers.

7. Notify your customers and begin closing accounts. You do not want to leave your customers stranded. Once you have exhausted efforts to collect outstanding accounts receivable, go ahead and notify your customers that your business is winding down, thank them for their loyalty and, if possible, offer whatever transition assistance you can to minimize any inconvenience to your customers.

8. Comply with applicable public notice requirements. Under the Virginia Limited Liability Company Act, for example, there is a statutory process for providing notice of dissolution to known and unknown creditors and claimants. This is an optional process. The benefit to the dissolving business entity (and its owners) is that by following the statutory notice requirements, liability risk is reduced and the business is better positioned to make liquidating distributions, if any, to its owners.

Under Virginia law, one way to give notice is by sending a written document directly to known claimants after the effective date of dissolution. Proper written notice must: (i) provide a reasonable description of the claim that the claimant may be entitled to assert; (ii) state whether the claim is admitted, or not admitted, and if admitted (a) the amount that is admitted, which may be as of a given date, and (b) any interest obligation if fixed by an instrument of indebtedness; (iii) provide a mailing address where a claim may be sent; (iv) state a deadline, which may not be fewer than 120 days from the effective date of the written notice, by which confirmation of the claim shall be delivered to the dissolved limited liability company; and (v) state that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not delivered by the deadline.

A business owner also may give notice to other (unknown) claimants by publishing a dissolution notice in a newspaper. As with sending direct notice to individual claimants, there are specific rules for giving notice through publication. Generally speaking, claimants have three years after the date of newspaper publication to bring a claim against the dissolving company.

9. Take care of your tax requirements. The requirements for this part of the process will vary depending on the type of business entity dissolving. At a minimum, you will need to (i) submit final income, sales tax, and employee tax returns to the state and federal government, (ii) cancel your Employer Identification Number (EIN), and (iii) report the sale of any business assets.

Discuss these requirements with your accountant. The IRS has a helpful checklist available at: <https://www.irs.gov/businesses/small-businesses-self-employed/closing-a-business>.

10. Cancel registrations, permits, licenses, and assumed name filings. The specific requirements to address these licensing and registration issues will vary depending on the governing authority or agency. Failure to cancel your various registrations, permits, licenses, and business names can leave you liable for taxes, fees, and penalties long after dissolution.

11. Comply with applicable employment and labor laws. If your business has at least 100 employees, then you will need to comply with the requirements of the federal Worker

Adjustment and Retraining Notification Act (the WARN Act), the details of which can be found online at <https://www.vec.virginia.gov/vecportal/employer/pdf/warnact.pdf>. Also, work with your accountant or payroll service provider to make sure final payroll is processed correctly.

- 12. Pay your outstanding debts.** Make arrangements to pay off outstanding debt to lenders, suppliers, vendors, and other third-party creditors. As noted above, you should try to negotiate with your creditors to be fair to them while reducing your liability exposure and risk of having to resort to bankruptcy.
- 13. Distribute any remaining assets and close financial accounts.** Once final payments are made to your employees, state and federal taxes are paid, and debts are settled, you may distribute any remaining assets to the business owners in the manner set forth in your governing documents. After all distributions are made, close your business bank account and cancel any business-related credit cards.
- 14. File Articles of Cancellation (LLCs) or Articles of Termination (corporations).** These are the forms that are filed to voluntarily dissolve your business entity. Once this document has been filed and processed, your LLC or corporation will no longer legally exist. Virginia requires business owners to submit their Articles of Cancellation by mail or online to the SCC with a nominal filing fee. For corporations, it is actually a two-step process involving filing Articles of Dissolution to put the world on notice that the corporation is in the winding down process, and then filing Articles of Termination to confirm the dissolution process is complete.
- 15. Maintain business records.** Although you dissolved your business, you are legally required to maintain tax and employment records for a number of years, and it is generally considered a best practice to retain key business records for a number of years post-dissolution. The retention period for different types of records typically ranges from three to seven years, depending upon the applicable statute of limitations.

If you have questions or need legal assistance winding down your Virginia small business, please contact Eric Perkins at eric@ericperkinslaw.com or (804) 205-5162.