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Walking Away: Limit Your Liability When Your Business Closes for Good

October 28, 2007

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Closing a business means different things to different people. A sale of your business assets could fund your luxury retirement. Or your business may have failed, or perhaps ill health or death leaves no one in the company with the expertise to carry on. Regardless of the reason for closing your business, the law requires one final act from owners who want the liability of their entity to die with it. Dissolution.

During the existence of a properly organized and maintained limited liability entity, owners cannot be held personally responsible for the debts of their business. At the end of its existence, a final act must be made to notify the business' creditors or potential creditors of their right to make their claims within a reasonable period or forever hold their peace. When the correct procedure is followed, claims made after dissolution against former owners' personal assets are deemed to be barred by the passage of too much time.

When closing a business run as an entity such as a partnership or limited liability entity, some owners may remove the assets from the business assuming they are entitled to those assets. If an owner's removal of business assets results in insolvency of the business, creditors can successfully recover their debts from the owner's personal assets. The dissolution process can give business owners certainty that the business' affairs have been properly concluded.

While general partnerships do not protect their owners from business liability, they should be "terminated" nonetheless for a different reason—to let the public know that future debts are those of the partners who incur them and are not owed by the partnership. This issue may arise because partners in a general partnership are considered "mandataries" or agents of the partnership.

If a partnership ends and the public is not notified, the acts of the partners may continue to be attributed to the partnership. Each partner owes his "virile share" of partnership debts. Therefore, even though the partners have agreed to go their separate ways, new debts attributable to the former partnership may still follow each of them individually if termination is not undertaken to publicly disclaim that relationship.

As you can see, failure to properly dissolve may result in the owners being held *personally* liable for every contract or tort of their former limited liability business. For general partnerships, failure to notify the public of its "termination" may result in innocent partners' responsibility for future acts of their former business partners.

The cost and duration of the dissolution process is heavily dependent upon the complexity of your business' affairs and the quality of the owners' relationships. Dissolution may be conducted in or out-of-court. Court supervised dissolution may be either voluntary or involuntary. Court supervised dissolution may be called for when, for example, there aren't enough assets to pay the business' debts, when the owners are deadlocked in their management, or when judgment has been entered nullifying the business' articles.

Whether in or out-of-court, dissolution requires the formal liquidation of business assets and payment of all business debts from the liquidation proceeds before the owners will be entitled to withdraw their share of the remainder. The result of successfully completing this process is an assurance to the owners that their personal assets will not be claimed to repay former business creditors.

Dissolution begins when owner or the court appoints one or more "liquidators." These individuals are vested with the power to act as owners for the duration of the liquidation.

As discussed above, liquidation involves converting business assets into cash which is used, in turn, to pay business creditors. Creditors are notified the liquidation process has begun both by personal notification through the mail and by notice placed in a newspaper of general circulation in the parish where the business is domiciled.

The notice must give the creditors at least six months to make a claim for repayment of the debt with the liquidator. Copies of the newspaper notice, along with an affidavit of the publisher attesting to the fact that the notice was published on two consecutive weeks in the legal notices, and the certificate of the owners declaring their intent to liquidate must be filed with the Secretary of State.

Once the time for making a claim has passed and all claimants have been paid or all assets divided among the claimants, the liquidator must file a certificate declaring the liquidation was completed. At this point, the Secretary will issue a certificate of dissolution.

Variations in the process include requirements that (1) corporations file a certified copy of both the certified copies of the owner's certificate of intent to liquidate and the Secretary's certificate of dissolution with the clerk of court for the parish where the corporation maintains its registered office; and (2) the Secretary check with the Departments of Revenue, Labor and Environmental Quality to ensure all fees and taxes are paid before issuing certificates of dissolution to corporations and limited liability companies.

Partnerships may register their termination with the Secretary, but such termination does not result in the issuance of a "certificate of dissolution." This registration puts third-parties on notice that the partnership is no more and that former general partners can no longer be deemed to act as agents of the now-

defunct business. A certificate and certified copies of the termination document are issued.

Owners of a business are not required to dissolve immediately. It may be advisable under certain circumstances to delay liquidation and distribution of assets. For example, businesses should choose to delay dissolution until after any current lawsuit are resolved, until the statute of limitations runs on the most likely or expensive torts potentially attributable to the business, or until bankruptcy proceeding are completed to discharge known business debts.

Limited liability entities that have not conducted any business that would result in a claim by a creditor or tort victim may choose to dissolve "by affidavit." Dissolution achieved in this fashion provides no limitation of liability to former owners. In other words, valid claims for repayment of debts of the business will be owed by its former owners—regardless of whether the owners had notice of those debts prior to dissolution.

For more information on this subject, see:

- ◆ Louisiana Secretary of State:
 - <http://www.sos.louisiana.gov/tabid/94/Default.aspx>;
 - <http://www.sos.louisiana.gov/tabid/352/Default.aspx>.

Dissolution by affidavit is achieved by filing an affidavit announcing the dissolution with the Secretary. The affidavit is available for download as a .pdf document from the Louisiana Secretary of State's website at <http://www.sos.louisiana.gov/tabid/94/Default.aspx>.

In conclusion, proper organization of a business is only the beginning—literally. To fully protect you and your family from the risks of doing business, a considered and correctly executed exit from your business is required as well. Simply walking away when you close your doors may result in your former business affecting your personal assets—for a lot longer and to a far greater degree than you expect.

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