



Building Oregon's Best Businesses

YOUR GUIDE TO **BUSINESS CLOSURE**

OregonSBDC.org



The Oregon SBDC Network is funded in part through a Cooperative Agreement with the U.S. Small Business Administration, the Oregon Business Development Department, and other private and public partners, with Lane Community College serving as the Network's lead host institution. Oregon SBDC services are extended to the public on a nondiscriminatory basis. Language services are available for limited English proficient individuals.





INTRODUCTION

From the Authors

This guide is intended to help you with one of the most difficult decisions you will make as a business owner: whether you should close your business owner. We, the authors, have closed businesses before and we understand the toll this decision has on business owners, family members, employees, customers and others. Closing a business is not a personal failure, even though it may feel like it at the time.

Your Small Business Development Center is here to provide assistance throughout this process. This guide, developed by the Portland Community College SBDC, is intended to help you think about this process. This guide helps make this process easier by providing businesses with the most common considerations when making the decision to close the business. The information provides context that other business owners have used in making this decision and that may help you shape strategy for the business closure process.

Although this guide appears as a linear process, it is best considered as a whole list of considerations and steps. The guide is not intended to be comprehensive but rather oriented toward many of the important key considerations and steps.

Consider if these statements are true:

1. Economic conditions prevented the business from re-opening or staying open
2. This may be an opportunity to explore the future, or take a break and reinvent doing something similar or altogether different

There are professionals available to support you through this process. These professionals may be those who have closed a business themselves, or may have additional expertise in a specific area. Your local Small Business Development Center, CPAs, and attorneys are examples of these expert resources.

CONSIDERATIONS FOR BUSINESS CLOSURE



Making the decision to close the business includes reviewing past circumstances, an objective assessment of your current situation and a best guess in estimating future action and activities. It is important to review and think through the information that you have found, researched or have been made aware of by other business owners. It is also important to seek professional guidance and counsel on closing the business because there are many considerations to make and tasks to complete. For example:

- How do I/we decide to close the business?
- Is the lack of financial success the main concern?
- Have we exhausted every avenue of assistance and guidance?
- Who does the business support financially (employees, possibly family members) that could be harmed by this closure?
- Who is being impacted by the stress of the current business situation?
- Is the strain becoming, or has already become, too much? If so, what to do next?

If you have considered or have already decided to close the business, there is a process to follow for whatever type of business you have, and for whatever way you determine is the best way to close the business. The steps to understand this process are found in this Guide to Business Closure.

Notes:

BUSINESS CLOSURE BY TYPE OF BUSINESS



The type of business you have may require different preparations and processes.

Manufacturing – you will potentially have equipment and other assets to sell

- A manufacturing business may have component parts for unfinished goods that the company makes that may be able to be returned to suppliers
- There may be a cost associated with returns and may not entail the company to fully recoup the cost of raw goods from the supplier
- Most likely there will be charges to pay the freight for returning raw goods
- If closing through bankruptcy, some or all of the equipment and other assets may not be owned by the business and therefore cannot be sold

Restaurant – you will have equipment and other assets to sell

- There are often used restaurant equipment buyers and sellers in your local community - request an appraisal for valuation
- Same issue as above: if closing through bankruptcy, the right to sell equipment and other assets is limited to items owned by the business

Retail* – with inventory to sell, or other assets (fixtures, shelving, office equipment)

- Consider liquidating retail inventory by having a “going out of business” sale
- You may want to hire a company to administer or a liquidator to manage the sale for you
- Same restrictions as above concerning closing through bankruptcy

Personal Services – consider any available inventory to sell, including assets (e.g. fixtures, shelving, office equipment, vehicles)

- Consider having a “going out of business” sale
- You may want to hire a company to administer the sale for you
- Same restrictions as above concerning closing through bankruptcy

Professional Services – often have assets to sell that are specific to the business’ professional and technical requirements

- Contact your professional association and or network for resources to liquidate assets
- There are used office equipment and furniture businesses that could facilitate a sale
- Reminder: office equipment and electronics the business does not own free and clear cannot be sold

*Oregon has consumer protection laws that prohibit sham going out of business sales. A going out of business sale may not last more than 90 days and may not include newly-purchased merchandise. See <https://sos.oregon.gov/business/Pages/going-out-of-business-sale.aspx> for additional information.

BUSINESS CLOSURE BY TYPE OF BUSINESS



Important considerations

1. IF a lender(s) has a lien(s) on company assets, a business will NOT be able to sell the assets without a lien release from the lender(s) on the loan
2. Most lender liens on business assets are created by UCC filings by the lender; verify with the lender(s) the existence of UCC filings (get copies of them), and what they are specifically filed on
3. Provide legal counsel with copies of the UCC filings for their review
4. IF the company files bankruptcy, the company assets will belong to the bankruptcy estate, and are subject to the decisions of what the bankruptcy trustee and creditors want to do with the assets

Notes:

STEPS TO CLOSING THE BUSINESS



Many of the steps to business closure involve working with professionals who have expertise in the processes a business owner needs to complete.

This section is intended to inform the business owner(s) of steps and resources to explore when considering the process of closing the business. Taking time to plan now may minimize potential risk in the future and inform your process!

Decision to Close

For a sole owner business, the first step is to make the decision to close. For a business with multiple owners, the first step is agreement from all to close the business.

Articles of Organization/Incorporation

If Articles exist, review them for indication of how to close the business. And if not, it would be important to create a document on the decisions and steps taken to close the business. In either case (with or without Articles of Organization), the decision should be formalized with a document signed by all owners of the business.

Legal Counsel

Make sure you are covering all of the bases for correctly closing the business to reduce as much potential liability as possible. If you do not have an attorney, ask a peer or friend for a referral or visit the Oregon State Bar website (<https://www.osbar.org>). Prior to meeting with an attorney, ask for a checklist of items to bring to your meeting and which will be discussed. Some of these items may include:

- Information about the business financial creditors (those to whom the business owes money)
- Information about the business vendors and suppliers which the company owes money to
- Business and personal assets that are free and clear
- Balance sheet and profit and loss statement for the prior fiscal year and year-to-date through the most recently completed month

Financial Counsel

Check with a certified public accountant (CPA) to understand the accounting considerations needed to close a business. Ask for guidance to reduce potential liability as much as possible.

- If your CPA does not have experience in business closure or you do not have a CPA, check with other businesses that have closed and used a CPA for guidance
- Contact the Oregon Society of Certified Public Accountants (OSCPA) (<https://www.orcpa.org>) if you need to find a CPA to assist you with your business closing

STEPS TO CLOSING THE BUSINESS



Peer to Peer

Contact other (similar) small business owners who have closed a business. This may provide information and steps they took to accomplish their business closure. - Peer to peer conversations may also lead to other useful resources as well.

Other Action Steps to Consider

- Contact state and local governments to cancel business registrations, permits, licenses, and business/trade names no longer needed to protect business, personal finances and reputation
- Eliminate/liquidate unencumbered business assets
These are business assets that do not have any liens on them by any financial institution or other entity. These are also assets that are not part of the bankruptcy estate if you filed bankruptcy.
- For those businesses with employees, complying with employment and labor laws is very important; reference the Bureau of Labor & Industries website (<https://oregon.gov/boli/workers/Pages/paychecks.aspx>) for employee payment after closing
- Notify federal and state tax agencies of the business closure, and follow this IRS checklist (<https://www.irs.gov/businesses/small-businesses-self-employed/closing-a-business> — this IRS link has both Federal and State of Oregon information on business closure notification and checklists for business closure)
- Cancel the Employer Identification Number

Maintain Administrative Records

You may be legally required to maintain tax and employment records, among other business files. Oregon's retention schedule is available through the following IRS link (<https://www.irs.gov/businesses/small-businesses-self-employed/recordkeeping>), just above Business Closure Considerations by Type of Business.

Note: Oregon's business records requirements are more stringent than the IRS!

CLOSING THE COMPANY THROUGH BANKRUPTCY



Closing the business through filing for bankruptcy is best accomplished by seeking legal counsel through a bankruptcy attorney. There may be company and personal obligations involved depending on the situation. Find a bankruptcy attorney with strong references demonstrating competence when navigating the bankruptcy process. An inexperienced attorney can cost more in the long run. This is a very important decision with future impact.

Contact the Oregon Directory of Bankruptcy Attorneys (<http://www.oregonbankruptcy.com/attorneys.html>) for assistance in finding a local bankruptcy attorney to assist you.

While bankruptcy may reduce a large portion of personal and company's debt (assuming the owners are personal guarantors on business loans and other accounts) and may be the only option you have determined is viable, bankruptcy also impacts one's personal credit score for seven years.

- Bankruptcy will affect personal and future business borrowing options going forward making it harder to obtain financing, subject to higher interest rates, and likely require larger down payments before credit approval is granted
- Not all debt is written off through the bankruptcy process
- The bankruptcy attorney will assist you in evaluating the risks and benefits of the bankruptcy decision

Notes:

Now that you have reviewed the action steps for consideration, here are possible steps for communicating about your closure with relevant stakeholders including employees, customers, creditors, vendors and the government. It is appropriate to discuss your messaging with a labor and employment attorney in advance to protect both the owners and the business from potential liability.

Employees

- In the face of adversity, be a good boss
- As soon as possible, inform all employees that the business will close and that they will be laid off
- Be sure to secure inventory and other valuable equipment before communicating about the lay-off to employees
- We suggest that regardless of company size, the business sends a written notice of closure to all employees
- It is best practice that they hear this from the business owner rather than from a third-party
- Federal law requires companies with more than 99 employees to provide written communication that the company is closing
- Employees must receive this written notice at least 60 days before the closing date

Clients or Customers

- Treat customers and clients with care and respect. If you decide to open another company, or re-open at a later date, these customers and clients may remember how well they were treated and be loyal to the new business
- Inform all customers and clients that the business will close
- Tell them the last date to place any final orders
- Depending on how you want to communicate with your customers and clients, consider providing them with names of other vendors or suppliers who can provide similar goods or services

Creditors and Vendors

Inform all of your creditors and vendors of the impending closure

- Contact creditors and vendors to negotiate possible reduction in business debts, for lowering the principal, the interest, and payments
- These communications will be predicated on whether you are closing the business “on your own”, or filing bankruptcy

Note: *You will not be able to sell equipment and other valuable assets of the company if a bank or other lender has a lien on those assets, or if you have filed bankruptcy.*

A Note on Paychecks

- State laws may require the business to pay employees for unused sick leave, vacation or other personal time as accrued (<https://www.oregon.gov/boli/workers/Pages/paychecks.aspx>)
- Issue final paychecks to employees by their last day of work, or in accordance with state laws (<https://www.oregon.gov/boli/workers/Pages/paychecks.aspx>)

Notes:

CONCLUSION



For those considering closing the there is a process to follow for whatever type of business, and for whatever way you determine is the best way to close the business.

Finding helpful resources and following the appropriate steps are important in order to follow the laws for correctly closing the business and reducing exposure to potential risk and liability.

In this Guide to Business Closure we have highlighted several important considerations and steps to closing the business. We also acknowledge how much courage it takes as a business owner to close the business, trust the professional guidance from others, and maintain confidence in one's decision.

Just as there are business closure professionals such as attorneys, CPAs, bankers, and bankruptcy attorneys, there are also business development specialists who can support business owners with decision-making, resources and planning the steps to close the business. Many of these resources are available at no cost and are available in the local community.

The team of business advisors at Small Business Development Centers (SBDCs) are located in communities throughout the state of Oregon. Some of these advisers are specialists in business closure, exiting and transition. They are available to assist business owners by listening to thoughts, ideas, questions and can help with planning business closure using the resources shown in this document as a guide.

To locate a business advisor in your community please visit the Oregon SBDC Network website at OregonSBDC.org

Additional no cost resources for your reference:

- <https://www.sba.gov>
- https://law.lclark.edu/centers/small_business_legal_clinic/