

# How to Handle a Business That is Facing Financial Crisis



*Are you staring at a difficult situation and not sure what to do?*

## First Step

Consult your CPA and a knowledgeable Attorney. Schedule a meeting with them both to develop a plan. A knowledgeable CPA and experienced Attorney working together can guide you down this road.

## What are the options?

**1. Liquidate the business.** This option is fully dependent on the value of the liquidated assets. Even if all creditors could be paid in full, there is no protection provided from creditors and lawsuits.

**2. Sell the business.** Many small business owners would like to think they could just sell their business to someone and "wash their hands". Be careful of this. Get advice first.

**3. Declare Bankruptcy for the business.** While not an easy decision for a business owner to make, Bankruptcy can offer the following protections:

- Automatic Stay (relief) from lawsuits, judgments, repossessions, and collection actions.

- When properly executed by an experienced attorney, bankruptcy can shield you from most future liabilities and lawsuits, and can "wipe the slate clean" should you wish to start a new business.

## What are the steps necessary to prepare a business for bankruptcy filing?

The following requirements should be followed at a minimum; consult closely with your Attorney and CPA.

- File necessary documents with the Secretary of State or State Corporate Administrator to dissolve the corporation or partnership
- Continue to pay any regular salaries, but do NOT make any large debt payments, or shareholder distribution prior to filing. Your attorney will advise you of this.

## Tax Authority and Regulatory Requirements

- File all final payroll reports including Forms 940, 941, W-2s, as well as State payroll returns
- File Final Sales Tax and property Tax Returns
- Notify all government agencies of the termination of the corporation
- File Federal and State corporate tax returns, and mark them as "Final Returns"

**General Business Assets** - Be sure that all assets are accounted for, and that no assets or funds are transferred to or co-mingled with any new business venture. If assets are co-mingled, then any new business could be deemed liable for the debts of the previous business.

**Leased Property and property that is secured** - Any property that is secured can not be sold. Property that is leased will generally be returned, and if you are occupying a leased space, you should move out of that space.

**Debts** - This is the MOST important step, to make sure that you have a comprehensive list of ALL business debts, liabilities, even thinking of potential liabilities, both business and personal. Especially any taxes owed to the IRS, State, or any other government entity, these debts must be given a priority status.

**Debts** - This is the MOST important step, to make sure that you have a comprehensive list of ALL business debts, liabilities, even thinking of potential liabilities, both business and personal. Especially any taxes owed to the IRS, State, or any other government entity, these debts must be given a priority status.

**Contracts** - Any entities you are currently under contract with should be included in the list.

Suppliers and customers that are owed money should be listed in the bankruptcy. Once you have retained an attorney to prepare your bankruptcy filing, calls from them can be directed to the attorney.

**Asset Sales by the Corporation** - Before selling any assets of the corporation, check with your attorney first! Be very careful in how the proceeds from any asset sales are handled. Your attorney will need to advise you as to the procedures required by the Bankruptcy Court.

**Drawing Money as a Business Owner or Officer** - Consult your attorney before drawing any money from the Corporation.

**Consider Filing Personal Bankruptcy** A Personal Bankruptcy, along with the business bankruptcy may be something to consider, especially if you have personally guaranteed any of the equipment notes or loans of the business. Personal Bankruptcy can have the effect of shielding you from further personal claims. A knowledgeable attorney can help you make an informed decision.

**Marguerite Kirk, Attorney**  
(817) 354-4900  
Bank of America Bldg  
2000 E. Lamar Blvd, Suite 600  
Arlington, TX 76006  
[www.margueritekirk.com](http://www.margueritekirk.com)

**Practitioner's Note:** In my 30 years of helping small businesses in financial trouble, I have seen many times that closing a business must be done properly to avoid future pitfalls. Please share this guide with your clients that may be in this situation. I am always happy to discuss any individual client situations or questions with you.

*-Marguerite Kirk*

**CONTACT MARGUERITE AT [WWW.MARGUERITEKIRK.COM](http://WWW.MARGUERITEKIRK.COM)**