

## – An Introduction

Even the best-intentioned of business partners decide to split up after so many years of doing business together. Like any breakup, business breakups are part business and part emotion. Often, there are personal differences unrelated to business differences. Just as often, determining where a business is heading, or whether it is doing well or faring poorly, causes irreconcilable differences. It is just as wise to hire an attorney who is experienced in breaking up businesses to handle these matters as it was to hire an attorney to set up or form a business. It shouldn't be expensive to break up a business if the partners or officers agree to a firm, but fair, breakup of the expenses, liabilities and assets of the business. But, often, there are complex decisions to be made, even in inexpensive and simple businesses. Hiring an attorney experienced in these matters is a good investment to make.

This guidebook seeks to provide you with an overview of some of the issues that need to be considered when dissolving or changing the ownership structure of a business. As you read through its contents, please contact us with any questions you may have.



As you read through this guidebook, feel free to contact our firm if you have any questions

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Call now for your free consultation.

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*This guidebook is for informational purposes.  
Since individual situations and legal issues vary, it is important to  
contact an attorney to discuss your specific legal situation.*

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# Breaking Up is Hard to Do In Business

## Questions to Be Answered:

The questions to be tackled are not easily answered in the best of circumstances. For example, what happens to the liabilities of the firm? Even the most informal businesses, say two or more working partners engaging in business out of a garage, or running a business out of their apartment or home, generate serious questions, including some of the following:

- The tools and other working assets belong to whom? Who paid for them may not be the last word. Were they paid for by one partner but based on the understanding that the firm owned them?
- The clients, especially in trades where there are steady clients along a route or in a small town, belong to whom? There might even be a “non-compete” agreement already written up or needed. These agreements are just written contracts where the partners tally up the routes they covered and agree who gets what route and which clients.
- Rented or owned real property often is used as a corporate or partnership headquarters. There’s often a lease, and who gets to pay the lease (and who is liable under its terms) is a legal set of problems. Landlords usually enforce leases, whether or not you will use the space you rented. Serious problems arise when one partner’s house is used as a business.
- Liabilities such as back rent, back mortgage, licensing fees, utility bills, unpaid salaries, unpaid zoning and traffic violation summonses and supplies (especially trade-specific supplies such as lumber, electrical fixtures and the like) are all liabilities someone will have to pay for. The last thing you want to hear is that liabilities have survived the business you just broke up, and that there is a process server on his way to serve you with a lawsuit.
- Clients are a liability as well as an asset. When you have promised to service a client, that promise is a liability to perform. Clients are routinely unwilling to accept the news of your breakup as a cancellation

of your duty to service them. This is especially so if there was a down payment, or ongoing account, in that client’s favor. Courts are also not happy to hear the excuse that a contract was left open. The contract is enforceable.

- If the business form is a partnership, appropriate legal forms are required to be filed to prove the dissolution of the business. If a business is carried on without your participation or your consent, you are still liable if the certificate is not filed. In the case of a lawsuit, or a traffic accident, you will still be sued.
- If the business is in a corporate form, you need to dissolve the corporation legally. If it is not legally dissolved, then it survives, and that means liability, with the need to pay corporate taxes and other expenses, so this dissolution must also be strictly enforced.
- If a business asset was held in the name of another person (typically a spouse or common-law partner), the matter of who gets the asset may be complicated.
- Closely held corporations (meaning that only the principal owners own the shares in that corporation) are also sticky legal matters to dissolve, and corporation law is not easily digested by non-lawyers. Often, shares are backed by property. That’s also a complication.



The questions raised above are not simple, and this is dealing with legal questions arising from the breakup of a small, simple company, whether it be a partnership or a corporation. If a bigger business is dissolved, even more complex issues arise. There might be stockholders involved, fees, penalties and even criminal litigation rooted in the problems, and all of these matters must be addressed. In any event, attorneys know how to keep personal problems apart from business problems, because a clean and clear dissolution of any business is in the best interests of everyone involved.