FOREWORD

Dear Friends,

Can you imagine being abruptly ejected from the United States — and leaving behind your home, your children, your job, your bank account, and everything else you’ve spent years to build? Can you imagine what your children would feel when they arrived home and you’re gone?

Deportation can be a cataclysm for families and communities, destroying decades of hard-earned assets and rupturing family development. But with advanced planning, immigrant families can prevent an enormous amount of this damage.

That’s why Appleseed is proud to present an updated version of its 2012 Manual, “Protecting Assets and Child Custody in the Face of Deportation.” This one-of-a-kind resource is designed for immigrants and those who work with them; the host of attorneys, nurses, social workers, religious workers who are stepping up in challenging times.

Appleseed’s Manual will help families develop plans in advance to deal with critical financial and family issues in the event of deportation, arrest, and other family emergencies. It will help immigrant families deal with child custody and related children’s issues, personal finances, assets and personal property, remittance payments, wages and benefits, business issues, and taxes. And it includes special guidance for family and children’s issues, including professional advice for parents to help their families deal with painful psychological issues, and for immigrant survivors of domestic violence and sexual assault.

Make no mistake: for vulnerable immigrant families, advance planning can make all the difference. Once an immigrant is detained or deported from the United States, navigating a legal proceeding or managing assets is much more difficult, or even impossible, especially since immigration laws bar immigrants from reentering the United States after deportation for several years.

We are grateful to our pro bono law firms, volunteer psychologists, translation companies, and more than 20 nonprofit partners across the country who wrote, researched, proofread, and translated this manual into Spanish. We could simply not have done it without you. Thank you so much to Adams and Reese LLP, the Asian Pacific Institute on Gender-based Violence, ASISTA, Ballard Spahr LLP, BGBG Abogados, Cooley LLP, Directum Translations, Hogan Lovells LLP, Mexico Appleseed, the Mexico
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Immigrants come to the United States to build a better future and to unite with family members. Most have lived in the United States for many years, paying taxes and joining the daily life of their communities. Over time, immigrants buy homes, start businesses and build personal assets. When they build better lives, they make our country stronger.

That’s why this Manual is a labor of love for all who worked on it. We are committed to fairness and compassion for the millions of immigrants living in our country. Our hope is that you can use this resource to help them build better lives.

Sincerely,

Annette LoVoi, Director, Financial Access and Asset Building, Appleseed
Disclaimers

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Appleseed recognizes and understands the legal term “alien,” used to describe any person born in another country to parents who are not American and who has not become a naturalized citizen, but is living or staying in the United States. However, throughout this Manual, we will primarily use the term “immigrant” in place of the term “alien” based on AP Stylebook guidance and the recommendations of our partners. The exception will be when citing laws, codes, or regulations that specifically use the term “alien.”
21. DISSOLVING OR SELLING A BUSINESS

Selling or dissolving a business may pose many legal complexities depending on a number of factors, such as the form of business, whether the business is jointly owned and the need to address the tax matters and licenses associated with the business. For this reason, this is an area where professional legal support is often needed. This chapter addresses the following issues:

- What are Common Forms of Business Organizations?
- What are the Considerations When Selling or Dissolving a Sole Proprietorship?
- What are the Considerations When Selling a Jointly Owned Business?

What are Common Forms of Business Organizations?

State and federal laws govern businesses, and outline various forms of business organizations. For the purposes of federal law, the most common types of business entities are: (1) the sole proprietorship; (2) the partnership; (3) the corporation; and (4) the limited liability company.

The majority of small businesses begin as sole proprietorships. As a result, this chapter is tailored to sole proprietorships. In a sole proprietorship the owner faces unlimited liability for all debts incurred by the business. On the upside, there is relatively little paperwork required in order to start and dissolve a sole proprietorship. Additionally, all income derived from the business flows directly to the owner and is reflected on the owner’s personal tax returns. As a result sole proprietors may need to file several tax forms including but not limited to:

- Form 1040 (an Individual Income Tax Return);
- Schedule SE (Self-employment Tax);
- Form 4562 (Depreciation and Amortization);
- Form 8829 (Expenses for Business Use of Home; and
- Employment tax forms.

When facing potential deportation, individuals should check with a tax attorney or specialist to make sure they have filed the correct forms. Filing
the wrong forms can be seen as tax evasion or fraud which are deportable offenses and which could affect future re-entry.

In a **partnership**, two or more individuals run and operate a business, and normally each partner has unlimited liability for the debts and obligations of the partnership. There are three types of partnerships: The general partnership, limited partnership and limited liability partnership. In a limited liability partnership, each individual partnership has a reduced amount of liability. Instead the limited liability partnership as a whole maintains liability.

In contrast, a **corporation** is a business entity that has separate legal standing from its owners. The defining characteristic of a corporation is that it has limited liability for its owners – specifically, that its members are not personally liable for the debts and obligations of the corporation. This chapter does not focus on corporations because they are not common in the small business context, but it is still important to seek legal support when selling or dissolving a corporation.

A **limited liability company (LLC)** is a business structure whereby the members of the company cannot be held personally liable for the company’s debts or liabilities. LLCs are essentially hybrid entities that combine the liability protection of a corporation and the tax characteristics of a partnership or sole proprietorship.

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**What are the Considerations When Selling or Dissolving a Sole Proprietorship?**

An individual must take into account several considerations when they wish to sell or dissolve a sole proprietorship because all states and localities have different requirements for terminating sole proprietorships. Additionally, it is wise to check with an attorney familiar with the requirements of the Secretary of State, county, city and small business administration and knows the appropriate steps to take.

**Dissolving a Sole Proprietorship**

Dissolving an individual business as opposed to selling the business may be preferred when there are time constraints. Closing a sole proprietorship does not require negotiations or transfers. As a result it may be faster than selling a business. In either case, it is important to keep accurate records and set aside a reserve for unexpected debts, taxes and bills.

When dissolving a sole proprietorship, the owner must notify: (1) Secretary of State; (2) the county and city clerk’s office; (3) local, state and federal tax authorities; (4) licensing entities and trade associations; (5) creditors and
suppliers; (6) customers; (7) employees; (8) landlords and equipment lessors; and (9) banks. However, unlike many other businesses there is no need to officially register the dissolution of a sole proprietorship.

Nonetheless, there is no shortage of tasks to complete before dissolution. Owners should complete all final orders, notify customers, and pay outstanding debts. It is just as important to cancel registration, permits licenses and business names. Employment and labor laws may also dictate how to notify, terminate and pay employees and file related tax paperwork.

Owners who are facing deportation should consider what assets they can sell after dissolving the business, such as equipment or merchandise. After selling assets, owners should close all business bank accounts and credit cards.

**Selling a Sole Proprietorship**

Selling a sole proprietorship is advantageous when time constraints are not present, when a buyer has already shown interest, or when the business has a particularly high valuation. The process for selling a sole proprietorship may be complicated and it is recommended that an owner who wishes to sell the business, obtain the advice of an attorney and business broker.

An owner must first consider the valuation of the business taking into account the licenses, leases, and other assets of the business. As a procedural matter, an individual who sells a business must reflect the sale on all tax forms. For federal purposes, the seller must document the sale on the Form 8594 (Asset Acquisition Statement). In some states, such as Texas, an individual can dissolve, and a new owner can register the business on sales tax forms. In Wisconsin, if the business name is not the new owner’s full legal name, the new owner must file a “doing business as” application. There are many state specific variances.

If the owner has a mortgage or lease on the business property or on equipment used for the business, they should also transfer these to the new owner and getting releases from the lenders and lessors. Failure to do so could result in the individual being responsible for payments or injuries long after they have left the country and is no longer running the business.

If the business is worth less than its debts, a business owner might consider initiating a state law remedy usually called an “assignment for the benefit of creditors.” This involves transferring all of the assets to an assignee (liquidator) who sells the assets and distributes the proceeds pro-rata to creditors who file claims after being notified. This process is most often used for businesses (corporations or limited liability companies) as state law typically will not provide an individual or sole proprietor with a “discharge”
of their debts. While the owner still may have personal liability for any unpaid trust fund taxes, creditors may be less likely to pursue collection efforts.

What Are the Considerations When Selling a Jointly Owned Business?

In a jointly owned business or partnership, it is critical to have open dialogue with the co-owner. If one of the parties wants to remain in business, the parties should read their agreements and consider the co-owner’s right of first refusal, consent or notification rights and change of control procedures.

Co-owner’s Right of First Refusal

In general, a right of first refusal is the right of a person to buy something before the offer is made available to others. A right of first refusal is often stated in an agreement between the business owners. Thus, the parties will need to refer to their agreements. If an individual’s agreement with their co-owners contains a right of first refusal provision, they must offer to sell their share of the business to the co-owners before offering it to anyone else.

Co-owner’s Consent and Notification

Even if the co-owners do not have, or decide not to pursue, a right of first refusal, they may still want to have some control over who gets the individual’s share of the business. Before selling their interest, an owner should check to see if the owners’ agreement requires a seller to get consent from the other co-owners. The agreement may at least require the seller to tell the co-owners about the sale. If provisions like this exist in the contract, an individual must abide by them.

Change of Control

Furthermore, if an individual and others jointly own the business, the seller, before selling their interest, should determine whether any contracts related to the business require notification to anyone upon a “change of control.” A change of control can occur when a business owner sells their portion of the business. For example, some contracts require that upon a change of control, a business owner, before selling their interest, notify the bank that loaned money to the business, the bank that holds the business’ mortgage, or any entity that gave a license to the business. If the owner’s contract contains a change of control provision that is triggered by the sale of their interest, then they must abide by the terms of that provision.
CHECKLIST: DISSOLVING OR SELLING A BUSINESS

☐ Decide if you want to dissolve or sell your business. Depending on the type of business, dissolving your business may take less time.

☐ Once you know what you want to do with your business, it is best to hire an attorney as soon as possible to help you with the following steps.

☐ Determine what type of business you own:

- **Sole Proprietorship** – single owner with full liability of costs incurred by the business.
- **Partnership** – two or more individuals run and operate the business and each has full liability of costs incurred by the business.
- **Corporation** – business entity that has separate legal standing from its owners.

*Dissolving a Business (Sole Proprietorship)*

☐ If dissolving a business check requirements of your state, locality, and small business administration in order to determine what steps must be taken.

☐ Notify your:

- Secretary of State;
- County and City Clerk’s office;
- Local federal tax authorities;
- Licensing entities and trade associations;
- Creditors, insurers and suppliers; and
- Customers.

☐ In addition, before dissolution you must:

- Pay all bills and debts;
- Abide by employment laws; and
- Keep records for tax purposes;
Selling a Sole Proprietorship

☐ It is best to first get the advice of an attorney and a business broker.

☐ You should consider how much your business is worth. To do this take into account the licenses, leases and other assets of the business etc.

☐ You must document the sale on the Form 8594 (Asset Acquisition Statement).

☐ There are probably state filing requirements as well.

☐ In the sale make sure to transfer all mortgages or leases on the business property or on equipment used for the business.

Selling a Jointly Owned Business

☐ You should speak to your co-owner early to determine if they want to dissolve your company as well.

☐ If your co-owner wants to continue to own the company look to the agreement to see if your owner has a right of first refusal, consent or notification rights, or what change of control procedures are necessary.

☐ If any of these terms are present you must abide by them.