

**NO SUCCESSION PLAN? NO PROBLEM.  
JUST CLOSING UP A COMPANY  
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In several previous articles, we have discussed “succession planning”. Succession planning is exactly what it sounds like - passing the company on to someone else, whether by sale or promoting within.

But what if you don’t want to engage in succession planning? It is complicated in the best circumstances and can be tough to do for a smaller company. Just closing it up is one option I’ve seen used several times recently.

**How to Do It.** The simpler of the options as it may be, there is more to it than simply putting a sign saying “Gone Fishin’” on your door. There are several minimal steps that need to be done. The basic ones are as follows.

**Your License.** Make your license inactive. The CSLB provides a form called “[Application to Inactivate Contractor’s License](#).” You must complete and return this form. However, you must maintain “Inactive” status by continuing to renew your inactive license at the times prescribed by the CSLB (currently every four years). The cost of inactive license renewal is \$180, which covers the four-year period.

The CSLB provides the renewal form approximately sixty (60) days before renewal. By making your license go Inactive, you are not required to maintain the license bond and your license will not be suspended or cancelled. However, you cannot contract for home improvement services while your license is inactive. The benefit of maintaining your license as inactive is that it is easier to reactivate your license if you wish to go back to work.

The alternative is cancelling your license. You can do this by writing to the CSLB headquarters indicating a clear desire to voluntarily cancel your license, with a valid signature by the license holder. There is no fee for cancelling the license. Licenses are generally automatically cancelled upon death of the license holder or dissolution of the entity (if corporation or other).

**Your Corporation.** If you are a corporation (and the vast amount of our clients are corporations), there are several things to do. First, you need to hold final corporate meetings stating the intent to close the business. Memorialize the meetings. Second, you need to inform the Department of Corporations - California Secretary of State Business Program that the corporation is going to be dissolved. The Secretary of State provides a form and instructions, titled [Domestic Stock Corporation Certificate of Election to Wind Up and Dissolve](#) (commonly known as a certificate of dissolution). You should also notify any creditors of your intent to dissolve and resolve any outstanding debts.

This is a very important step. If you do not properly wind up and dissolve your corporation it can be costly to address if a problem arises. If your corporation is suspended for failure to file tax returns or pay taxes, which is always required if your corporation is not properly dissolved, it is not able to defend itself in court. Thus, if you are sued for defects years down the road and your corporation has been suspended, you must file all delinquent tax returns, pay any applicable taxes (including minimum tax), and any penalties, in order to bring your corporation into good standing and defend itself. This is an all too common problem and one that can be easily avoided.

A warning about corporate records: be sure that you keep them around for a bit. As discussed below, possible liability for latent defects is ten years. That would be a minimum safe period to hold the records.

**Tax Return.** Be sure your CPA knows this is the final year of operation. You need to prepare and file any applicable tax returns and pay any taxes owed. You should work with a tax professional to ensure this is done properly. If you fail to properly file any tax returns or pay any taxes, your corporation may go into suspension and it can be costly to undo.

**Liability Insurance.** The poor contractor has any number of theories of liability/causes of action under which he can be chased – breach of contract, negligence, defects, etc. Each has a separate statute of limitation. In layperson’s terms, this is the length of the time period during which the poor contractor may be sued.

Unfortunately, the contractor/builder has one of the longest civil statutes of limitation on the books; under Civil Code Section 337.15, there is liability for latent defects for ten years from the date of substantial completion. (Ouch.) That means you can happily be fishing five years after the Smith job when you are contacted regarding a claim!

It makes sense to talk to your insurance broker prior to closing up shop and see if you can obtain what’s called a “tail-coverage” policy. A tail-coverage policy is an extension of liability insurance that permits an insured to report claims that are made against the insured after a policy has expired or been canceled, if the wrongful act that gave rise to the claim took place during the expired/canceled policy. Tail coverage requires that the insured pay an additional premium.

It is possible that there will not be any tail-coverage options available. If this is the case, an alternative is to try to maintain your CGL policy for as many years as you need - given the statutes of limitations applicable to your work - after winding up your business. While this is not a great option from a cost perspective, it may be the best available for providing liability protection.

**Conclusion.** It is important to properly close up your business when you are ready. We know that this seems like a hassle when you really are ready to go fishing.

But it is extremely important. This is especially true when your business is a corporation due to the inability to defend itself if not properly dissolved. As always, we recommend you talk to an attorney, tax professional, and insurance broker when the time comes. It will be worth the investment to wind up your business properly.

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For Bryant's previous articles, please visit SFBA NARI's website and click on the link "In the News/Newsletter" under "For the Trade." They are also available on his website under "Articles," and on Brian's website under "[Publications](#)."

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