

Doing business in multiple states

[Gavel to Gavel](#) appears in The Journal Record. This column was [originally published in The Journal Record](#) on March 9, 2017.

One of the first considerations in forming a business entity is where to organize or incorporate. However, there is another important and frequently overlooked inquiry, which is where else to qualify that entity to do business.

If a business entity functions outside of the state in which it was formed, it may need to qualify to do business in that foreign state. Each state has different requirements for what constitutes doing business for this purpose. For many states, certain activities within that state, without more, do not require qualification. These activities usually include maintaining bank accounts, carrying on activities concerning internal corporate affairs, acquiring indebtedness, owning real or personal property, or conducting isolated transactions completed in 30 days.

Thus, the threshold for requiring businesses to qualify is relatively high. While these acts may not constitute doing business for qualification purposes by themselves, the general standard for qualification is based on the cumulative effect of all of the activities performed in the state in question. Generally, to be required to qualify, the foreign entity must transact a substantial part of its ordinary business within the state. To constitute ordinary business, activities must be indispensable to the business rather than simply incidental.

Failure to qualify can result in many penalties. Entities can be barred from access to the courts in states where they are unqualified, including Oklahoma. This can mean they are unable

to enforce contracts entered into in these states. Unqualified entities, and individuals acting on their behalf, can be fined by foreign states in which they do business, including Oklahoma, where there is a statutory provision imposing fines. These fines can include backward-looking fees and franchise taxes to the state for the period in which the entity has operated while unqualified in the state, as well as a fine per transaction while unqualified.

The best course of action when faced with these issues is to determine where a business entity will transact substantial business and examine the specific statutory and case law of that state to determine if qualification is required.

Practitioners should keep in mind that what constitutes doing business for qualification purposes may not be the same threshold for what constitutes doing business for taxation and service of process purposes in some states, including Oklahoma.