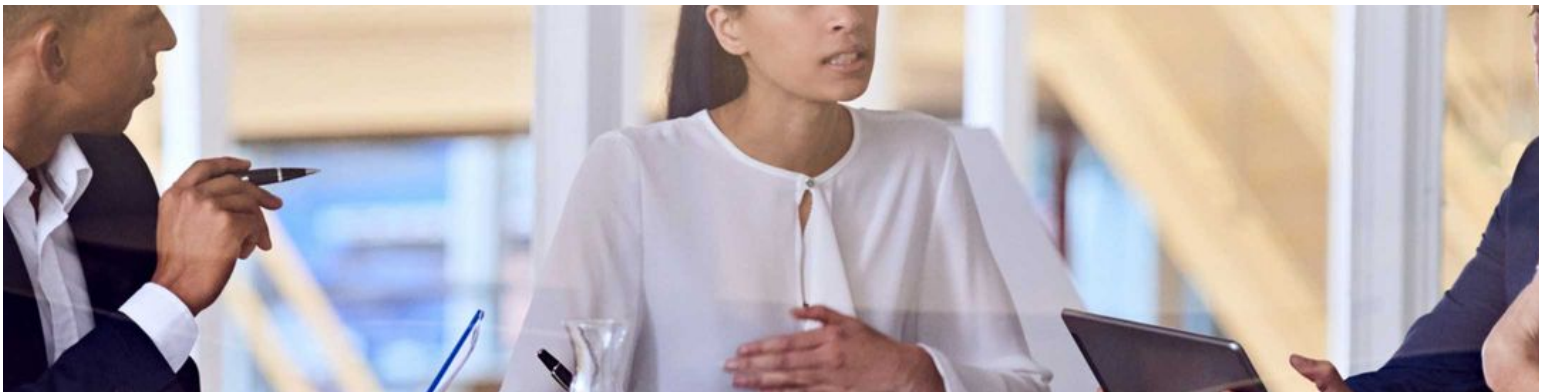


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COMPLIANCE DECEMBER 21, 2020

# Corporations and LLCs doing business in another state? Don't let the courthouse door

# close on you.

By: [Sandra Feldman](#)



## The foreign qualification requirement

Corporations and LLCs that transact intrastate business in a “foreign” state — that is, any state other than their formation state — must obtain the state’s authority to do business there.

This is required by every state corporation and LLC statute. Obtaining authority is done through a procedure traditionally called “qualification”.

Qualification involves filing an application for authority with the state agency in charge of business entities — such as the Secretary of State — and paying a fee. It also requires the appointment of a Registered Agent.

## The door-closing penalty

As an inducement to get corporations and LLCs to comply with the qualification requirement, the statutes also provide that a foreign corporation or LLC

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transacting business in the state cannot maintain an action in the courts of that state until it has qualified. This is known as the “door closing” penalty.

The doors will also close on foreign corporations and LLCs that did properly qualify but that have subsequently had their authority to do business revoked by the state. Administrative revocation results from the corporation or LLC failing to comply with certain statutory requirements, such as failing to file an annual report, paying franchise taxes in a timely manner, maintaining a Registered Agent, or notifying the state of a change in Registered Agent or registered office within a specified period of time.

## The lack of capacity defense

If a corporation or LLC files a lawsuit in the courts of a foreign state, the defendant, upon discovering that the plaintiff either never qualified or has had its qualification revoked, can move to dismiss the lawsuit on the grounds that the plaintiff lacks the capacity to sue in the state. (Although the state statutes close the doors of their own courts,

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federal courts sitting in diversity jurisdiction will generally apply the state law door-closing provision.)

Every plaintiff must have both the capacity to sue and standing to sue. Capacity involves the plaintiff's right to come to the court. It should not be confused with standing — in which the issue is whether the plaintiff has a cause of action. The defense of a lack of capacity is an affirmative defense and must be raised early in the proceeding, or it is waived.

## Avoid dismissal by qualifying or reinstating

After the motion to dismiss is made, the courts will generally stay the proceeding. The foreign corporation or LLC that was doing intrastate business without ever receiving authority will have a chance to qualify to avoid dismissal. The corporation and LLC will not only have to pay the filing fee but also penalties and interest for the time it transacted business without authority.

The revoked corporation or LLC will typically be given the opportunity to

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apply for reinstatement. That requires filing any back annual reports and paying franchise taxes that may be due. An application for reinstatement must be filed along with the filing fee and penalties and interest imposed for its non-compliance.

It should be noted that reinstatement is not always available. Some states provide a limited number of years in which reinstatement is possible. And although reinstatement relates back to the date of revocation, validating actions taken during the period of revocation, it has been held that reinstatement does not validate a lawsuit in which the statute of limitations has run.

## Conclusion

So, to sum up, the people managing or providing legal advice to corporations and LLCs should be aware that corporations and LLCs that transact intrastate business in foreign states need to comply with the provisions of the foreign state's corporation and LLC laws. Otherwise, they will find the courts closed to them, with the payment of penalties being the cost of reopening them.

Learn more about CT's [Foreign Qualification Services](#).

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**Sandra Feldman**

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Sandra (Sandy) Feldman has been with CT Corporation since 1985 and has been the Publications Attorney since 1988. Sandy stays on top of the most pressing and pertinent business entity law issues that impact CT customers of all sizes and segments.

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