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Buying Real Estate in Another State Don't Forget to Consider Qualifying to do Business There

6/27/2024

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Practices: Real Estate

As a general rule, corporations, limited partnerships or limited liability companies that aim to do business in a state other than where the entity was established must qualify to do business in that other state. However, as qualification may bring with it added costs, governmental compliance or filings and taxes or fees, most businesses are reluctant to qualify in other states. Thus, a business may seek to avoid qualification and typically try to do so by arguing that its activities do not constitute "doing business."

Whether certain activities rise to the level of doing business is a very state-by-state specific question with the answers being found in case law and statutes, specifically the Model Business Corporation Act ("MBCA"), if adopted by the particular state. The first step in the "doing business" analysis in states which have adopted the MBCA is to determine whether the business activities are specifically defined in the MBCA as "not doing business." If the MBCA does not specifically designate the activity as not doing business, the next step in the analysis is to determine whether the purpose and frequency of the activity rises to the level of doing business.

In states not having adopted the MBCA, the analysis is whether the entity's activities in the state are sufficiently regular, systemic or extensive to rise to the level of doing business.

Per the MBCA, the "owning of real estate without more" is not doing business. This is consistent with most case law in non-MBCA states. However, real estate investors, developers and purchasers must be careful as beyond mere ownership, most of the activities associated with real estate, such as developing, leasing, financing, subdividing, syndicating or cultivating it and many likely activities associated with real estate, such as evictions, tax assessment challenges or other types of litigation, would in most states likely constitute doing business.

As with any legal transaction, parties should consult with competent legal counsel when acquiring real estate in another state.

Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.