

ANNOUNCEMENT: CIVIL CASE TOLLING

On March 27, 2020, Governor Mike DeWine signed the General Assembly's Am. Sub. H.B. 197, which included provisions tolling certain statutorily set time requirements. That same day, the Supreme Court issued a companion order tolling the time requirements established by Supreme Court-promulgated rules. Together, these actions have given courts needed flexibility to respond to the impact of the coronavirus emergency. However, Am. Sub. H.B. 197 and the Supreme Court's order were intended as temporary measures, and both will expire on July 30, 2020.

In its "Frequently Asked Questions" bulletin, the Ohio Supreme Court has provided the following guidance on the application of the tolling statute and the Court's tolling order upon their expiration.

Q: HOW DOES TOLLING APPLY?

A: How tolling applies is fact dependent. The following examples of a defendant's answer are demonstrative:

- Example 1 – Defendant is served on March 3, 2020: Normally the defendant's answer would be due 28 days thereafter, on March 31, 2020. However, because **this deadline falls within the emergency period**, it is tolled effective the beginning of the emergency period, which is March 9, 2020. Because six days had already passed before the deadline was tolled, it means that once the emergency period ends, the defendant will have 22 days left to file an answer.
- Example 2 – Defendant is served on March 23, 2020: Normally the defendant's answer would be due 28 days thereafter, on April 20, 2020. However, because **this deadline falls within the emergency period**, it is tolled. In contrast to the previous example, the filing of the case occurred during the emergency period. Because the emergency period was in effect when the defendant was served, the entirety of the 28 days is tolled, meaning the once the emergency period ends, the defendant will have 28 days left to file an answer.
- Example 3 – Defendant is served on July 6, 2020: For this example, it is assumed the emergency period will last until July 30, 2020. The defendant's answer would be due 28 days thereafter, on August 3, 2020. Because **the deadline falls after the emergency period**, it is not tolled. Thus, the answer date remains August 3, 2020.

Although the Hamilton County Court of Common Pleas will follow this guidance in analyzing tolling issues that arise in cases before the Court, be advised that the Ohio State Bar Association has been working with the Ohio General Assembly on an amendment to modify/clarify the tolling provisions of HB 197. ***If adopted, these amendments would specify that, regardless of the original deadline, none of the days between March 9 and July 30 should count toward the running of the statute of limitations or any other administrative time limitations.*** If such legislation is enacted, a companion order from the Ohio Supreme Court of similar import would not be unexpected.

Further, Chief Justice O'Connor's July 13 email guidance to Ohio courts contains this reminder:

Please note that although Am. Sub. H.B. 197 and the Supreme Court's order will expire on July 30th, federal law or regulations, especially those enacted in response to the coronavirus, may still prohibit a case from proceeding. Furthermore, other coronavirus-related Court orders, such as the order regarding notary requirements for domestic-relations, juvenile, general, and probate forms will continue to remain in effect until further action by the Court.

Additionally, on June 17, 2020, the U.S. Department of Housing & Urban Development extended the CARES Act moratorium on foreclosure filings in connection with the COVID-19 national emergency until August 31, 2020. The moratorium prohibits a mortgage servicer from initiating a foreclosure action for not less than the 60-day period beginning March 18, 2020, for all Federal Housing Administration (FHA)-insured single-family mortgages, except for vacant or abandoned properties, as well as loans back by Fannie Mae and Freddie Mac. This order applies to the initiation of foreclosures, move for judgment, and an order for a sale.

We will continue to monitor the situation and provide updates as appropriate.