
TOLLING OF DEADLINES FOR MECHANICS' LIENS INCLUDED IN OHIO CORONAVIRUS RELIEF BILL

MARCH 27, 2020

On Wednesday, March 25, 2020, the Ohio General Assembly passed Am. Sub. H.B. 197 (“H.B. 197”), which provides measures for emergency relief to families, schools, businesses, and communities during the COVID-19 pandemic. Included in that relief is a mandatory tolling of various criminal, civil, and administrative deadlines that will impact both active litigants as well as essential businesses that are continuing to operate during these uncertain times. Ohio Governor Mike DeWine signed the bill into law on March 27, 2020.

Of particular import for the construction industry, H.B. 197 will toll the time period for recording and serving mechanics’ liens pursuant to Ohio Revised Code Section 1311. Notably, Section 22 of H.B. 197 includes a catchall provision that tolls “[a]ny other criminal, civil, or administrative time limitation or deadline under the Revised Code.” Since the time periods for filing of mechanics’ liens are strict requirements set forth in the Ohio Revised Code (e.g., R.C. 1311, et seq.), this enactment will directly impact the deadlines for both recording and serving the affidavits for mechanics’ liens and other related documents, such as notices of commencement, notices of furnishing, and notices to commence suit. Accordingly, it is important for anyone involved in the construction industry to be mindful of these issues, including, but not limited to, owners, developers, contractors, vendors, suppliers, and laborers.

TOLLING APPLIES ONLY DURING THE “EMERGENCY PERIOD”

Importantly, the tolling of these statutory deadlines applies only to deadlines that fall between March 9, 2020 and July 30, 2020. This time period corresponds to the date of Governor DeWine’s declaration of a state of emergency in Ohio due to the COVID-19 pandemic. The tolling will expire on the date that Governor DeWine rescinds the emergency order or July 30, 2020, whichever is sooner. Unless further legislative action is taken to extend this protection, the tolling period will end on July 30, 2020 at the latest – sooner if Governor DeWine lifts his state of emergency order before July 30, 2020.

Because the tolling period is retroactive to March 9, 2020, recording or service of any liens or notices that were required to be recorded or served between March 9, 2020 and the effective date (i.e., March 27, 2020) but were not (for COVID-19-related reasons or otherwise) may still be accomplished; however, retroactive filers must be cautioned that this portion of the bill may be struck as unconstitutional. If this portion of the bill is indeed found to be unconstitutional, such retroactive filings may be deemed untimely.

PRACTICAL GUIDANCE

While H.B. 197 provides some relief by tolling these time periods, it is recommended that you continue to calculate deadlines in the normal course and record or serve liens/notices within those original deadlines, if you are able. The primary goal of H.B. 197 is to relax the strict deadlines imposed for various activities during the pendency of the current pandemic and global health emergency and, as such, the tolling relief should be used only when necessary. This is particularly true since the deadlines imposed by R.C. 1311 are strictly applied. Owners, developers, contractors, vendors, suppliers, and laborers should avoid any unnecessary risk that comes with a “late” filing for reasons unrelated to COVID-19. As always, it is recommended that you consult legal counsel to address any specific questions or concerns regarding the scope and application of H.B. 197.

ADDITIONAL INFORMATION

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