

July 26, 2021

DEADLINE FOR EXERCISING TOLLING AND EXTENSION OF DEVELOPMENT ORDERS AND PERMITS DUE TO THE COVID-19 STATE OF EMERGENCY FAST APPROACHING

Despite the significant uptick in real estate investment in South Florida through the first half of 2021, impacts from the COVID-19 pandemic may still pose timing challenges to real estate developers with planned or ongoing developments.

This Client Alert provides an update on recent developments and upcoming deadline for exercising available tolling under Florida law for eligible permits and development orders.

STATE OF FLORIDA COVID-19 STATE OF EMERGENCY

On March 9, 2020, Governor DeSantis issued Executive Order 20-52 declaring a statewide state of emergency due to the threat COVID-19 posed to the health, safety, and welfare of the State of Florida and its residents. On April 27, 2021, Governor DeSantis issued Executive Order No. 21-94 further extending the state of emergency declared by Executive Order No. 20-52, which was previously extended by Executive Orders 20-114, 20-166, 20-192, 20-213, 20-276, 20-316, and 21-45, for another sixty (60) days. Governor DeSantis chose to not further extend Executive Order 20-52, and thus, the COVID-19 statewide state of emergency officially expired on June 26, 2021.

TOLLING OF ELIGIBLE PERMITS, DEVELOPMENT ORDERS AND OTHER AUTHORIZATIONS UP TO 6 MONTHS PLUS THE DURATION OF THE STATE OF EMERGENCY

Pursuant to Section 252.363, Florida Statutes, the declaration of a state of emergency resulting from a natural emergency provides for automatic tolling and extension of expiration dates of eligible development orders and permits for the duration of the emergency declaration, plus an additional six (6) months. This includes not only building permits, but site plan approvals, tentative plat approvals, and other development orders issued by municipalities and counties.

DEADLINE TO EXERCISE AUTOMATIC TOLLING AND EXTENSION: SEPTEMBER 24, 2021

Under Florida law, the holder of the permit or development order has ninety (90) days after the expiration of the state of emergency to notify the issuing authority of its intent to exercise the tolling and extension granted by the statute. The notice must be in writing and identify the specific permit or authorization qualifying for extension. Accordingly, based on the expiration of the Governor's Executive Order, the deadline to notify issuing authorities of the applicable tolling and extension is September 24, 2021.

Development orders, permits, and other authorizations whose expiration date were previously tolled and extended as a result of a prior state of emergency, for instance Hurricane Dorian, may again seek to toll and extend the expiration date pursuant to the state of emergency declared as a result of the COVID-19 pandemic.

APPLICABILITY AND WRITTEN NOTIFICATION

The Department of Business and Professional Regulation (“DBPR”) has previously determined that the COVID-19 state of emergency declared by Executive Order No. 20-52 qualified as a “natural” emergency, and therefore, qualifying development orders, permits, and other authorizations may be extended under the provisions of Section 252.363, Florida Statutes. A copy of the DBPR FAQ can be reviewed [here](#).

Each issuing authority may have independent protocols or forms that are adopted in relation to the Statute. Therefore, it is advisable to contact an attorney licensed in Florida with expertise in this area of law to assist in identifying the appropriate local government jurisdiction and evaluating the potential applicability of the statute and notification requirements on a site-specific basis.

Wernick & Co, PLLC brings you this client alert as part of our efforts to stay on top of legal developments in these times of unprecedented change.



If we can be of assistance or you would like more information, please do not hesitate to contact us.



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