

California Courts May Shorten Tolling of Limitations Periods in Land Use Cases Under Emergency Rule



On April 6, 2020, the California Judicial Council adopted Emergency Rule 9, which

tolled statutes of limitations on civil causes of action for the duration of the state of emergency declared by Governor Newsom on March 4, 2020, and for 90 days thereafter. The effect of the emergency rule was to suspend the running of all statutes of limitations from April 6 until 90 days after the Governor declares the state of emergency related to the COVID-19 pandemic to be over. For example, if the Governor ended the state of emergency on June 30, 2020, any statute of limitations would have been suspended from April 6 through September 28, 2020 (i.e., for 175 days). The chairs of the Judicial Council's six internal committees have now proposed the amendment of Emergency Rule 9 to shorten the tolling period and to set different tolling periods based upon the length of the statute of limitations. Under the current proposal (which could be amended before it is adopted):

- Statutes of limitations longer than 180 days would be tolled from April 6 to **October 1, 2020**.
- Statutes of limitations of 180 days or less would be tolled from April 6 to **June 15, 2020**.

Impact on Land Use Claims Many claims involving land use decisions are subject to limitations periods of 180 days or less, including most claims challenging planning, zoning and subdivision decisions (90 days); CEQA claims (30, 35, or 180 days, depending on the triggering event); claims involving LAFCO or the Coastal Act (60 days) and claims involving the validity of fees, dedications or exactions (180 days). The Council's stated rationale for establishing a shorter tolling period for matters with shorter statutes of limitations is that (a) long tolling is inconsistent with the Legislature's intent that such causes of action be brought expeditiously; and (b) most lawsuits with shorter limitations periods are generally challenges to governmental actions and are based solely on the administrative record, as contrasted with claims with longer statutes of limitations that may require investigation and information gathering—actions more difficult to complete promptly in the current environment. The emergency rule (whether or not amended) tolls only the periods for filing judicial actions or proceedings (such as mandate proceedings) and does not apply to other deadlines, such as requests for reconsideration by the agency or the submission of monetary claims against government entities under the Government Claims Act. **Clarification Regarding Construction Defect Limitations Periods** The proposed amendments also clarify that the emergency rule tolls "statutes of repose" as well as regular statutory limitations periods for civil causes of action. Statutes of repose differ from ordinary limitations periods in that they typically cannot be equitably tolled (i.e., they run regardless of whether the potential claimant knew or reasonably could have known of the existence of the claim). Examples include the statutes of repose for construction defects in Code of Civil Procedure sections 337.1 (four years for patent defects) and 337.15 (10 years for latent defects). The Judicial Council is likely to take action on the proposed changes to Emergency Rule 9 within the next two

weeks.
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