



# STATE OF TEXAS

# STATUTE OF LIMITATIONS

(during COVID-19 pandemic)

**Prepared by**

Barbara Jane Barron

Charlotte Rogers

MehaffyWeber

One Allen Center, Suite 2800

500 Dallas Street

Houston, TX 77002

Tel: (713)655-1200

Email: [BarbaraBarron@mehaffyweber.com](mailto:BarbaraBarron@mehaffyweber.com)

Email: [CharlotteRogers@mehaffyweber.com](mailto:CharlotteRogers@mehaffyweber.com)

[www.mehaffyweber.com](http://www.mehaffyweber.com)

## EXTENDED STATUTES OF LIMITATIONS DURING THIS TIME OF COVID-19

The Texas Supreme Court orders delineated below, specifically addressed the issue of the tolling of the statute of limitations. After the September 15, 2020 extension date, the Texas Supreme Court omitted language contained within the previous orders specifically extending the tolling of the Statute of Limitations. For instance, the 26<sup>th</sup> order states, “all Texas courts MAY modify or suspend any deadlines and procedures...” This differs from the specific language in prior orders explicitly extending the deadline for filing or service of civil cases. Some scholars have interpreted the recent orders to mean the statute of limitations deadlines have been tolled until February 2021. Obviously, that interpretation is subject to argument. The Court clearly extended the tolling of limitations to September 15, but they ceased using the same language; therefore, the stronger argument is that the automatic tolling ended on September 15<sup>th</sup> and whether the statute of limitations is tolled is now in the individual court’s discretion. This interpretation is supported by the current language of the Twenty-Ninth order—which states any court **MAY** modify or suspend any and all deadlines and procedures.

On March 13, 2020, Governor Greg Abbott declared a state of disaster in response to the threat of the COVID-19 pandemic. As a result of the Governor’s order, the Supreme Court of Texas issued its First Emergency Order Regarding the COVID-19 State of Disaster providing that “all courts in Texas may extend the statute of limitations in any civil case for a stated period ending no later than 30 days after the governor’s state of disaster has been lifted.”

On May 27, 2020 a coalition of bar associations and attorneys sent a letter to the Texas Supreme Court requesting that the Court issue one uniform limitations rule for the entire state.

On April 1, 2020, in its Eighth Emergency Order Regarding the Covid-19 State of Disaster, the Supreme Court of Texas clarified the extension of the statute of limitations by proclaiming:

Any deadline for the filing or service of any civil case is tolled from March 13, 2020, until June 1, 2020, unless extended by the Chief Justice of the Supreme Court. This does not include deadlines for perfecting appeal or for other appellate proceedings, requests for relief from which should be directed to the court involved and should be generously granted.

On April 27, 2020, in its Twelfth Emergency Order Regarding the Covid-19 State of Disaster, the Supreme Court of Texas modified its prior order stating:

Subject only to constitutional limitations, all courts in Texas may in any case, civil or criminal– and must to avoid risk to court staff, parties, attorneys, jurors, and the public– without a participant’s consent: a) Modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, specifically including those in Section 263.401 of the Family Code and all proceedings under Subtitle E, Title 5, of the Family Code, for a stated period ending no later than 30 days after the Governor’s state of disaster has been lifted.

The Twelfth Emergency order further stated:

Any deadline for the filing or service of any civil case that falls on a day between March 13, 2020, and June 1, 2020, is extended until July 15, 2020. This does not include deadlines for perfecting appeal or for other appellate proceedings, requests for relief from which should be directed to the court involved and should be generously granted.

On June 29, 2020, in its Eighteenth Emergency Order Regarding the Covid-19 State of Disaster, the Supreme Court of Texas extended the suspension of any and all deadlines and procedures in all Texas courts, whether civil or criminal, for a stated period ending no later than September 30, 2020. The Eighteenth Emergency Order further extended any deadline for filing or service of any civil case that falls on a day between March 13, 2020 and August 1, 2020 until September 15, 2020.

On July 31, 2020, in its Twenty-First Emergency Order Regarding the Covid-19 State of Disaster, the Supreme Court of Texas extended until September 15, 2020 the limitations on civil case filing and service of them for deadlines that fall between March 13, 2020 and September 1, 2020.

On September 18, 2020, in its Twenty-Sixth Emergency Order Regarding the Covid-19 State of Disaster, the Supreme Court of Texas stated:

“[s]ubject only to constitutional limitations, all courts in Texas may in any case, civil or criminal, modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than December 1, 2020.

Finally, on November 11, 2020, in its Twenty-Ninth Emergency Order Regarding the Covid-19 State of Disaster, the Supreme Court of Texas extended the modification or suspension of any and all deadlines and procedures, whether prescribed by statute, rule or order, for a stated period ending no later than February 1, 2021.

#### **TEMPORARY RULES EXTENDING TIME LIMITS TO SERVE COMPLAINTS AND/OR SPECIAL RULES RELATING TO METHODS OF SERVICE**

The Texas Supreme Court orders do not reference service, but guidance has been issued by various state and local courts, including the Supreme Court of Texas, the Courts of Appeal and courts in Bexar, Collin, Dallas, Harris, Tarrant and Travis counties. The guidance states generally that service of process is considered an essential service not subject to stay-at-home guidelines and travel restrictions per the March 28, 2020 *Advisory Memorandum on Identification of Essential Critical Infrastructure Workers during COVID-19 Response* issued by the U.S. Department of Homeland Security (workers supporting the operations of the judicial system). For hand delivered service of process, it is suggested that counsel should consider whether to reach out to the service recipient and their counsel to arrange in-person service that complies with social distancing guidelines. The note also advised that service by certified mail should be used where appropriate.

**This Compendium outline contains a brief overview of certain laws concerning various litigation and legal topics. The compendium provides a simple synopsis of current law and is not intended to explore lengthy analysis of legal issues. This compendium is provided for general information and educational purposes only. It does not solicit, establish, or continue an attorney-client relationship with any attorney or law firm identified as an author, editor, or contributor. The contents should not be construed as legal advice or opinion. While every effort has been made to be accurate, the contents should not be relied upon in any specific factual situation. These materials are not intended to provide legal advice or to cover all laws or regulations that may be applicable to a specific factual situation. If you have matters or questions to be resolved for which legal advice may be indicated, you are encouraged to contact a lawyer authorized to practice law in the state for which you are investigating and/or seeking legal advice.**