

Pennsylvania Enacts Act 15 of 2020 to Address Local Government Issues during the Pandemic

Modifies Public Meeting Rules, Suspends Land Use Application Processing Deadlines on a Limited Basis, Authorizes Taxing Bodies to Postpone the Property Tax Discount Date and Waive Late Fees and Penalties, and Authorizes the Remote Use of Notaries.

On April 20, in response to the COVID-19 pandemic, Pennsylvania Governor Tom Wolf signed Act 15 of 2020. Act 15 was unanimously approved by the Commonwealth's Senate and House of Representatives, and takes effect immediately. As part of broader legislation regarding healthcare cost containment, Act 15 addresses a number of critical issues for Pennsylvania local governments, most notably how to conduct business in compliance with applicable statutory requirements when the physical presence of their officials, constituents, development applicants and other interested parties is either highly discouraged by public health officials or prohibited altogether. This can be particularly problematic for applicants for a variety of local government land use approvals, consideration and action on which usually are statutorily mandated to take place at public meetings and hearings.

Among other things, Act 15:

- Eliminates the requirements for physical attendance at public meetings during the Governor's declaration of a disaster emergency by permitting the use of "authorized telecommunications devices."
- Provides for the limited suspension, or "tolling," of statutory deadlines for municipal boards and agencies to hear and act upon a wide variety of land use and other development applications.
- Authorizes taxing districts to extend the deadline for payment of property taxes at a discount and to waive fees and penalties for late payments.
- Authorizes the remote use of notaries via communications technologies.

Use of Telecommunications Devices to Conduct Public Meetings

Until the expiration or termination of the COVID-19 disaster emergency, an agency, department, authority, board, council, governing body or other political subdivision included in the declaration may conduct hearings, meetings, proceedings or other business through the use of an "authorized telecommunications device", defined as "any device, which permits, at a minimum, audio communication between individuals." Act 15 also dispenses with provisions in certain municipal codes, such as the Borough Code, requiring the physical presence at a meeting location of a quorum of the participating members, as long as a quorum is otherwise established through the authorized telecommunications device.

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To the extent practical, the local government entity shall post advance notice of each meeting conducted through an authorized telecommunications device (1) on the entity's publicly accessible website, if any, or (2) in an advertisement of general circulation, or (3) both. The public notice shall include the date, time, technology to be used, and public participation information. To the extent practical, the entity shall allow for public participation through an authorized telecommunications device or written comments, which may be submitted to the entity's physical address through the United States mail or to an email account designated by the entity to receive the comments.

A local entity shall not consider any application, plat, plan, submission, appeal or curative amendment unrelated to the Governor's COVID-19 declaration, unless notice to the public and interested parties has been provided at least five days prior to the meeting via (1) a post on the entity's publicly accessible website, if any, or (2) a newspaper of general circulation, or (3) both. This requirement is not limited to meetings conducted through authorized telecommunications devices, and as a result may impose advance public notice requirements on certain actions that did not previously exist. For example, the Municipalities Planning Code does not mandate that a local governing body provide advance public notice of subdivision and land development applications.

Finally, in the event a local entity calls a meeting under exigent circumstances, without advance notice to the public, to address any issue related to the Governor's COVID-19 declaration, minutes of that meeting "shall be posted" within 20 days after the meeting or before the next regularly scheduled meeting, whichever is earlier. However, this section of Act 15 does not specify the manner of posting.

Extensions for Existing and Pending Approvals

Act 15 also provides for the limited suspension, or tolling, of the statutory time limits for review, hearing and decision on the "approval" of an application, plat, submission, appeal or curative amendment. An approval is defined by cross-reference to the definition of that term in Section 2 of the 2013 Development Permit Extension Act, which covers local government approvals pursuant to over 30 statutes, including the Municipalities Planning Code, the Flood Plain Management Act, the Stormwater Management Act, the Pennsylvania Construction Code, and the various city, borough and township codes.

Specifically, as to any such application for approval received or pending as of the Governor's COVID-19 declaration on March 6, 2020, the number of days provided to satisfy statutory time limits in review, hearing, and decision shall be suspended and tolled as of the date of that declaration, or as of the date received if received during the pendency of the declaration, and shall resume 30 days after the effective date of Act 15. Since the effective date of Act 15 was April 20, 2020, tolling would cease on May 20, 2020. Thus, for applications filed on or before the date of the Governor's COVID-19 declaration, the total length of the tolling period would be 75 days. The length of the tolling period would decrease for later filed applications, until there would be no tolling for an application filed on or after May 20.

The local entity must notify the applicant of the declaration, the time extension, and of the right to request any meetings, hearings, or proceedings be conducted using telecommunications devices. The failure to receive the notice does not affect the tolling of the number of days. Within 30 days of the effective date of the Act, an applicant may request that a meeting, hearing or proceeding be held in accordance with Act 15 during the period of the COVID-19 declaration. The local entity shall have discretion to proceed with the request under Act 15. If a proceeding is authorized, the applicant and each party receiving actual notice of the proceeding shall be deemed to waive any challenge under the Sunshine Act or other provision of law that governs the notice, conduct or participation in a meeting or proceeding.

Property Tax Relief

Act 15 authorizes any taxing district, by majority vote of its governing body, to do any of the following with regard to 2020 real property taxes:

- Collect the tax at the discount rate no later August 31, 2020.
- Waive any late payment fee or penalty, if paid in full by December 31, 2020.

Authority for Remote Notarial Acts during the COVID-19 Disaster Emergency

Act 15 provides legislative authorization for the remote conduct of notarial acts. Under existing law, an individual must personally appear before a notary public in order for notarial acts to be performed. On March 25, 2020, the Pennsylvania Department of State (“DOS”) issued a notice of “Limited Suspension of In-Person Regulatory Requirements for Notaries for Real Estate Transactions,” which suspended the personal appearance requirements. A copy of the notice may be found at <https://www.dos.pa.gov/Documents/2020-03-25-Notaries-Inperson-limited-suspension.pdf>. However, until the passage of Act 15 there was no legal authority for remote online notarization without physical presence before the notary.

Under Act 15, a notary, subject to certain conditions, may conduct notarial acts remotely by the use of approved communication technology, until 60 days after the termination or expiration of the Governor’s COVID-19 declaration. If a notary wishes to be able to perform remote notarizations, he or she must notify the DOS 30 days in advance that he or she will be performing notarial acts facilitated by communication technology, and identify the technology to be used. The current “ENotary Application” may be found at <https://www.notaries.pa.gov/Pages/NotaryChangeApplication.aspx?AppType=3>; however this application may be altered following the passage of Act 15.

Additional details of the remote notary portions of Act 15 will be detailed in a future Client Alert.

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