

For Want Of A Deadline: Avoiding A Jurisdictional Pitfall

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The time for appealing from an order, whether final or non-final, is typically jurisdictional. If the appellant or petitioner misses the applicable deadline, the appellate court lacks jurisdiction to review the order on appeal. Consequently, it is important to be especially attentive, even overly cautious, regarding deadlines for filing appeals. Indeed, the best approach is generally to calculate, confirm, and re-confirm the applicable deadline, and then file and serve the notice of appeal a couple of days before the actual deadline.

Florida's Fourth District Court of Appeal's recent decision in *Guy v. Plaza Home Mortg., Inc.*, No. 4D17-3335, --- So. 3d ----, 2018 WL 1953106 (Fla. 4th Dist. Ct. App. Apr. 25, 2018), highlights the importance of exercising extra caution. Under Florida's Rules of Appellate Procedure, the time for an appeal runs from rendition of an order, which is the time when the clerk actually receives the signed, written order, not the earlier time at which the trial judge signed the filing. The Broward County Clerk, however, had been backdating foreclosure judgments to reflect the date on which the trial judge originally signed them, rather than when the clerk received the signed, written judgment.

Although it had not affected the appellant in the case, the *Guy* court nevertheless disapproved of the practice of the backdating judgments for docketing purposes. Not only was it contrary to the Florida Rules of Appellate Procedure, the court noted that it could potentially prejudice appellants by shortening the deadlines by which they must appeal.

Preservation Issue and Tip

While the appellant in *Guy* thankfully had not lost his right to appeal, another appellant might have. To ensure that you meet jurisdictional deadlines, and to avoid the extra stress and expense that missing a deadline can add to the appellate process, exercise caution. When calculating the date on which a notice of appeal must be filed, use the earliest potential date of rendition and then, just to be safe, file and serve your notice of appeal a couple of days before that.

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