

THINKING AHEAD...

TO DELIVER  
*peace of mind*

## CORONAVIRUS/COVID-19 IMPACT ON CONTRACTS

### HERE IS WHAT YOU NEED TO KNOW

Many of our clients have been forced to unexpectedly cancel or postpone planned conferences, activities and functions (events) resulting from concerns related to the Coronavirus. This has led to discussions with the other party to the contract that have largely evolved into negotiations relating to a potential refund of deposits paid or refunds of the total costs that the fraternal organization is contractually obligated to pay for the event even though it has been cancelled or postponed.

When engaging in these discussions with the other party to the contract, we recommend reviewing the terms of the contract and addressing the following items. We believe this will prove beneficial and increase the probability of successfully negotiating a refund of the costs that you are contracted to pay to fulfill the financial obligations of the contract.

- Does the contract include a **Cancellation Clause**? Our recent review of these contracts revealed that while some include Cancellation Clauses and stipulate that the fraternal organization is responsible for all costs incurred including deposits and the full cost of the event, others do not. If the contract does not address cancellation, we believe that an argument can be made that the venue does not have a legal right to retain any costs incurred or any costs you are contractually obligated to pay even though the event has been cancelled. If the contract addresses cancellation and stipulates that you are liable for all deposits and other costs associated with the event, it does not necessarily mean that you are contractually obligated to fulfill the financial obligations of the contract.
- Does the contract include a **Force Majeure Clause**? These clauses stipulate that the performance of the contract by either party cannot be enforced if circumstances beyond the parties control occur that meet the definition of Force Majeure, which typically include things such as wars, riots, earthquakes, lightning, explosions, energy blackouts, unexpected litigation, lockouts, slowdowns, strikes, disease and other similar circumstances. We believe that the concerns associated with Coronavirus meet the definition of Force Majeure and serve as justification for a fraternal organization being released from the financial obligations of the contract.
- If the contract addresses cancellation of the event and the language included is problematic for a fraternal organization and does not address Force Majeure, various State Common Laws include language that can also be used to justify that a party to a contract is entitled to be released from the terms of the contract without financial penalty. Most State's Common Laws include language similar to Force Majeure and stipulate that a party to a contract which cannot fulfill the obligations of it because of circumstances that make it impossible or impracticable are legally entitled to be released from the terms and conditions of the contract without financial penalty.

Based on these factors, we recommend that any fraternal organization that is forced to cancel an event because of concerns associated with the Coronavirus and is seeking a full refund of costs paid or costs that are contractually owed to the other party to the contract consider doing the following:

1. If the contract does not include a **Cancellation Clause**, point this out to the other party to the contract as justification for being released from the contract without financial penalty.
2. Even if the contract includes a **Cancellation Clause** which is not favorable, a **Force Majeure Clause** that includes language that applies to the fraternal organization which is a party to the contract can be presented to the other party of the contract as justification for being released from the contract without financial penalty.
3. Regardless of whether the contract includes a **Cancellation Clause** or a **Force Majeure Clause** that benefits the fraternal organization that is a party to the contract, advise the other party to the contract that **State Common Laws** typically include language similar to a Force Majeure Clause which afford a party the right to be released from the contract without financial penalty for circumstances that occur that are outside the control of the contracted party which makes fulfilling the obligations of the contract **impossible** or **impracticable**.

When entering into future contract with hotels, restaurants and other similar venues, we recommend that you negotiate with the other party to the contract and attempt to integrate the following provisions into the contract:

- **Cancellation Clause:** Confirm that the contract has a Cancellation Clause or request that one be integrated into it which releases both parties of the contact from the terms and conditions of the contract which are outside of your control which makes fulfilling the obligations of the contract impossible or impracticable.
- **Force Majeure Clause:** Confirm that the contract includes this Clause or request that one be integrated into the contract that applies to both parties to the contract. Below is a common Force Majeure Clause typically included in these types of contracts:

***“Force Majeure: The performance of this Agreement by either party is subject to acts of God, war, government regulation, disasters, fires, disease, strikes, terrorism or threats of terrorism, civil disorders, curtailment of transportation facilities preventing or unreasonably delaying event attendees and guests from participating at the event or other similar causes which are beyond the control of the parties making it inadvisable, illegal, impossible or impracticable to hold the event or for either party to fully perform the material terms of the Agreement. The Agreement may be terminated without penalty and with performance fully excused for any one or more of these reasons by written notice from one party to the other.”***

If you are able to successfully integrate an equitable Cancellation Clause and Force Majeure Clause into the Agreement, you place your organization in the best possible position to be released from the terms and conditions of the contract without financial should unforeseen circumstances arise similar to the concerns associated with the Coronavirus at some point in the future.

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