



Notes on Force Majeure Clauses

Nothing contained in this document should be construed as legal advice.

Force Majeure (Fr.) means “overpowering or irresistible force.” It means there is some event that is preventing the parties from fulfilling the contract.

The “test” for force majeure usually requires the satisfaction of three distinct criteria:

- ◆ the event must be beyond the reasonable control of the affected party;
- ◆ the affected party’s ability to perform its obligations under the contract must have been prevented, impeded or hindered by the event; and
- ◆ the affected party must have taken all reasonable steps to seek to avoid or mitigate the event or its consequences.

From Jeffrey S. Tanenbaum, Esq., here’s a sample clause for associations:

The performance of the 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 at least 25% of Event, attendees and guests from participating a the Event, or other similar cause, including emergency or non-emergency conditions, beyond the control of the parties making it inadvisable, illegal, impossible, or commercially impractical to hold the Event, for the Hotel to provide the meeting and sleeping rooms or related facilities and/or services for 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. Should the Association decide to proceed with the Event when a force majeure event exists, all attrition penalties under this Agreement shall be waived by the Hotel.

Include the following when canceling a contract:

- ◆ State the common law force majeure principle that the reason for canceling is causing “frustration of purpose.” Even if you don’t have a force majeure clause, this common law principle may legally excuse performance.
- ◆ Ensure that what you communicate to your members, board, and others, is consistent with the reason you give the hotel for canceling.