

**Force Majeure and Coronavirus Epidemic:**

**A Checklist to Determine Your Contractual Obligations**

The Coronavirus has caused significant adverse effects on businesses and individuals, particularly small businesses that were forced to shut their doors due to the pandemic. Many small business owners are wondering how they will satisfy their contracts and financial obligations during this time, including their commercial lease obligations. We, at The Halliburton Law Firm, LLC, offer the following considerations to help business owners and individuals determine whether they may terminate or suspend their contractual obligations during these uncharted times.

1. **Locate and Review Your Contracts** (e.g. Loan Agreements, Lease Agreements, etc.)
2. **Do your agreements include language that expressly includes a pandemic, public health emergency, outbreak of communicable disease, government regulations or similar occurrence as a “Force Majeure” event?**

Generally, a Force Majeure clause includes certain unforeseen events (like war, acts of god, etc.) or circumstances beyond a person’s reasonable control that may excuse a party from performing its obligations under the contract. A Force Majeure event may excuse performance obligations under the contract for the duration of the Force Majeure event. It may also extend beyond the event and relieve the party from liability due to nonperformance.

Other language may include circumstances under which the business or individual is rendered unable to perform obligations due to an action by the federal or state regulation that interferes in any way with a party’s rights and obligations under the contract.

1. **If** **there is no Force Majeure clause, is there any language that may impliedly include events like the Coronavirus and resulting business disruptions that may allow you to terminate or suspend your obligations?** (e.g. events beyond the control of a party, etc.)
2. **Is the Coronavirus the true reason you’re unable to perform under the agreement?**

To invoke the Force Majeure provision, you must still prove that the Coronavirus, and not any other reason/event that occurred before the Coronavirus, such as lack of revenue, was the reason you are unable to operate and pay rent, for example.

1. **Are there any exceptions or exclusions that would prevent application of Force Majeure?** (e.g., the provision may apply to certain occupancy requirements, but may contain a carveout for a party’s payment obligations, for example)
2. **Alternate Defense: Impossibility of Performance**

If your agreement does not contain language that would excuse your performance obligations, you may be able to assert the defense of “impossibility of performance”. Under this defense, you must establish that the parties could not have reasonably anticipated the Coronavirus and/or resulting government regulations at the time they entered into the contract. You must also establish that you did not cause the event and that the event made your performance impossible under the contract.

Due to the Coronavirus and its devastating effects, local governments have ordered that many businesses must cease operations, which may make it difficult, if not impossible, for those businesses to satisfy certain contractual obligations. These circumstances present facts that may trigger a Force Majeure event or a defense to excuse performance of a contractual obligation.

Please note that, every contract is different, and the language of each contract will control. It is very important that you review your contract very carefully and contact a qualified attorney, if necessary, before taking any steps to avoid your contractual obligations. In addition to the items above, there are other important considerations including, whether to seek termination of the contract or a suspension of obligations for a certain period of time.

We, at The Halliburton Law Firm, LLC, are here to support you and your business, especially during these difficult times. If you have questions about your contracts or contractual obligations, please feel free to contact us at **303.803.1060** or spryor@thehalliburtonlawfirm.com for a free initial consultation. We would be happy to address your questions and concerns. Together, we will overcome these challenging times, and we will thrive moving forward. God Bless.