

The thought occurred to me if the shutdown due to the Coronavirus continues for any length of time, our client's contracts may be cancelled by their GC or Owner. Or, for whatever reason, you may want to remove yourself from a contract.

My suggestion is review each of your contracts Force Majeure Clauses. Force Majeure is in almost all contracts and is for the protection of both sides of the agreement.

However, there are several requirements that must be met for the Force Majeure clause to take effect in a construction contract:

- The event must be beyond the control of the parties.
- The event either precludes or postpones performance under the contract.
- The triggering event makes performing under the contract more problematic or more expensive.
- The claiming party wasn't at fault or negligent.
- The party wanting to trigger the Force Majeure clause has acted diligently or tried to mitigate the event from occurring.

How is Force Majeure triggered? Some of the typical events are flood, fire, war, government orders, explosion, lightning, and earthquakes. Add to that the Coronavirus.

In addition, the length of the event must be specifically identified in the construction agreement. It generally corresponds to the overall duration of the contract.

The clause itself will also include an obligation to diminish the risk. That means the claiming party will need to act with diligence to remedy the event. It is obvious the claiming party cannot remedy a naturally occurring event like flood, or fire. Neither can they mitigate a pandemic event. Mitigation means, does the claiming party have to mitigate, or are the circumstances of the claim, such as fire or coronavirus, something that can't be mitigated?

**My observations are just that. My suggestion is if you are either considering trying to remove yourself from a contract or you have been notified that your GC or owner are using the Force Majeure clause to remove themselves. Contact your attorney.**

**I hope you will find this email helpful.**

**Thanks.**