

## Colorado – Force Majeure Law

Under Colorado law a force majeure provision will be enforced only when the event preventing performance is covered by the contract language excusing performance. *See Gillespie v. Simpson*, 588 P.2d 890, 891-92 (Colo. Ct. App. 1978); *see also Heller v. Fire Ins. Exch., a Div. of Farmers Ins. Grp.*, 800 P.2d 1006, 1009 (Colo. 1990) (“Where there is no ambiguity, [an] agreement will be enforced according to the express provisions of the contract, giving words their plain and generally accepted meaning.”).

Performance may also be excused under the doctrine of impossibility. Where the parties have not foreclosed application of the doctrine of impossibility and have not otherwise allocated the risk in their contract, performance is excused if the party obligated to perform can prove: (1) an event occurred that could not reasonably be anticipated when the parties entered into the contract; (2) the party obligated to perform did not cause the event; and (3) the event made performance physically impossible or impracticable because of a change in law, or an extreme and unreasonable difficulty, expense, risk of personal injury, or loss. *Colo. Jury Instr., Civil 30:23; Ruff v. Yuma County Transportation Co.*, 690 P.2d 1296, 1298 (Colo. App. 1984); *Town of Fraser v. Davis*, 644 P.2d 100, 101 (Colo. App. 1982); *City of Littleton v. Employers Fire Ins. Co.*, 169 Colo. 104, 108, 453 P.2d 810, 812 (1969). “The essence of the defense is not impossibility, but rather impracticability which is determined by whether an unanticipated circumstance has made performance of the promise vitally different from what should reasonably have been within the contemplation of both parties when they entered into the contract.” *Town of Fraser*, 644 P.2d at 101 (citation omitted).

“If governmental action is asserted to have rendered a contract impossible to perform, such action must have made the performance illegal, either by requiring an unobtainable license or in some other way; a new regulation merely rendering the performance more costly does not result in a legal impossibility.” *Colorado Performance Corp. v. Mariposa Assocs.*, 754 P.2d 401, 407 (Colo. App. 1987).

The doctrine of frustration of purpose may also excuse performance. “The party seeking to avoid the obligations in the contract ... on grounds of frustration of purpose must show total, or near total, destruction of the essential purpose of the transaction.” *Beals v. Tri-B Assocs.*, 644 P.2d 78, 80–81 (Colo. App. 1982). “The risk that economic conditions may change, or that government actions ... may impair the profitability of [a project], are



not so unforeseeable that they are outside the risks assumed under the contract." *Id.* at 81.