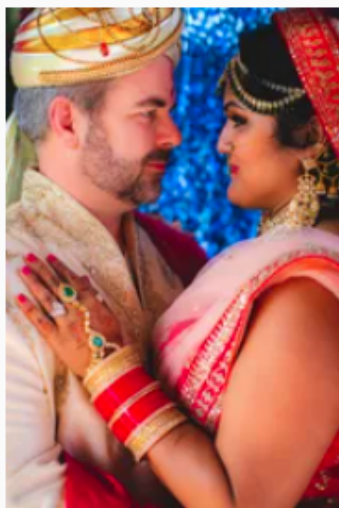


## How to get back deposit money if coronavirus canceled your conference or wedding

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**Bobby Borszich and Kirti Dwivedi had to cancel a hotel wedding for a much smaller private ceremony. (Photo: Channele Sinclair)**

Kirti Dwivedi and Bobby Borszich had just put down a deposit for what they envisioned would be a 60-person, Hindu-themed wedding ceremony and reception on May 2 at the Fairmont Scottsdale Princess, but it quickly became apparent the coronavirus outbreak and business-lockdown efforts were going to derail their plans.

The Phoenix couple decided to cancel and wound up holding a "virtual" wedding instead on April 25 in the backyard of a friend's house in Scottsdale, making the ceremony viewable to nearly 300 people over Zoom, including to Dwivedi's friends and relatives in India.

In the meantime, they began the arduous task of requesting a return of their deposit money from the hotel, a photographer, wedding planner and other vendors whom they had retained.

Dwivedi, a social- and digital-media focused marketing consultant whose business income has dried up during the health emergency, said she couldn't afford to let all that money go.

After weeks of negotiating, the story ended mostly well, with the hotel and other vendors agreeing to use the deposit money and collect full payment when the couple holds a reception later this year, hopefully when the pandemic passes.

"Everyone is holding our deposits, and they'll apply them later," she said.

Not all coronavirus cancellations turn out so well, with deposit money returned or credited and various other fees waived. In fact, many unresolved disputes could persist well after things gradually return closer to normal. Many event organizers still face the prospect of lost deposits and other cancellation fees.

"Attorneys and the courts will be dealing with this for three or four years," predicted Sam Saks, a commercial-litigation attorney at Guidant Law in Phoenix. So too, possibly, will thousands of consumers and small businesses.

But it pays to ask for concessions, be flexible and try to reach a compromise. In an April survey by Bankrate.com, 62% of the more than 2,600 adult respondents said they canceled plans to attend weddings, graduation parties, concerts, sporting events or other gatherings because of the outbreak, and 37% said they lost money.

But 50% of those who canceled and asked for refunds received one in the form of a credit, while 47% got their money back in full. Another 15% said they hadn't yet received a refund, and 12% still had unresolved issues. (Some participants gave more than one answer because they had multiple cancellations or dealt with multiple businesses.)

The survey was geared to guests and travelers, but even people who helped organize events often have been able to receive some relief, depending on the terms of their contracts and their relationship with hotels and various vendors. It pays to understand contract terms and to make requests with an accommodating, flexible attitude.

**QUESTIONS:** [As businesses reopen, employers face a legal minefield. Here's what they should know](#)

## Understand the agreement

If you helped to plan an event that you later were compelled to cancel due to coronavirus concerns, reread the contract you signed to see if there are provisions that would affect cancellations, especially in unusual circumstances. Make sure the document has been signed by both parties.

One key provision to look for is called "force majeure," a French term that refers to an act of God or nature or simply a superior or unavoidable force that upends plans. It refers to "circumstances beyond anyone's control," Saks said.

A force majeure clause can exclude or exempt one or both parties from performing their obligations or duties under the terms of a contract, in the wake of extraordinary circumstances such as a pandemic.

Lengthy, detailed commercial contracts almost certainly would include a force majeure clause, but contracts written up by or for small vendors might not, Saks said.

Another legal concept that could apply is called "frustration of purpose." It's a concept that indicates one or both parties could have performed under the terms of a contract but with changing circumstances making such performance essentially worthless or meaningless, Saks said.

For example, a wedding possibly could have been held as scheduled in late March, as the outbreak worsened, yet bans on having more than 10 people assemble, as recommended by the Centers for Disease Control, would have thwarted that.

Many customers probably could successfully cite frustration of purpose to get deposit money returned if a contract was signed well before the coronavirus outbreak hit home, Saks said. But if a contract was signed more recently, after the pandemic emerged as a widely understood risk, the chances for success would diminish, he said. Saks predicts many disputes will hinge on this timing issue.

That said, frustration of purpose can be tough to prove. For example, a business seeking to get out of a lease might not be able to argue successfully on this point. While the pandemic was highly unusual, business downturns and economic recessions are a normal type of risk, Saks noted.

Frustration of purpose likely won't show up as a clause in a contract but, rather, it's a legal concept. "It's something you could argue," Saks said.

## Look for common ground

Abbie Fink did read the contract before she agreed to help bring an international public-relations conference to the Hotel Valley Ho in Scottsdale. But as the coronavirus outbreak worsened, it became apparent that the event, scheduled for May 13-16, would need to be canceled, and she sought a solution.

At first, things looked grim for the association and the roughly 80 members who planned to attend. "The venue had every right to hold us to that contract, as we signed it," she said.

But things changed as government authorities moved to prohibit large gatherings. That's when it became apparent to some hotels that many wouldn't be allowed to hold conferences or might not have enough staff. The Valley Ho suggested pushing back the conference a year, to May 2021, Fink said.

"The hotel is holding the deposit money but agreed to move the dates, and that's great," she said. Fink called it an example of how both parties benefit from the goodwill created by successful negotiations.

Michelle Lind, CEO of the Arizona Association of Realtors, had a similar outcome when her group needed to cancel its annual conference and governance meeting, originally scheduled for late March, at a large Glendale hotel.

The association was expecting between 350 and 500 attendees, roughly half of whom booked hotel rooms. In addition to a \$15,000 deposit, the group's members were looking at perhaps \$180,000 in lost money if the hotel didn't budge on room fees and other prepaid costs.

After some give and take, Lind said, the hotel agreed to apply the funds to a rescheduled conference later this year, and it waived all cancellation fees.

"We met some initial resistance over the cancellation, but as time went on we were able to negotiate," she said. "The important thing is to stay in touch and talk it through."

## Refunds not always possible

Consumers should be mindful that some vendors perform a lot of work leading up to an event and thus might be justifiably reluctant to offer refunds. Ashley Allan, co-owner of Your Jubilee Weddings & Events, said it's common for wedding planners like herself to start nine to 18 months in advance, helping couples find a venue, select various vendors, design the event and perform other services.

For others, like photographers and videographers, most of the work is performed on the day of the event or afterward, she noted. These vendors might be more willing to offer refunds, though they too would suffer income losses if they can't find a replacement job on short notice. The majority of vendors in the wedding industry are small businesses that are dealing with income fluctuations due to the outbreak, she said.

While Allan said she typically wouldn't return deposits, especially if she already has done a lot of work for a client, she's open to trying working things out.

"Everyone in the industry is pushing for rescheduling rather than cancellations," said Allan, who is also Phoenix chapter president of the Wedding International Professionals Association. "We all want to be as accommodating as possible, but we also still want to be in business when this is over."



Kelsey Lovering ordered new cake toppers depicting the bride and groom in face masks after the coronavirus outbreak interrupted their original wedding plans. (Photo: John Starrett Photo)

## Other legal implications

Saks too suggests the consumers, small businesses or other groups seeking a return of deposit money first try to work out solutions with vendors before filing legal actions.

You also should be mindful of practical realities. Don't hire an attorney and spend \$5,000 in legal fees if all you hope to recover is a \$2,000 deposit, he said. "A good conversation or negotiation might resolve it."

Also, check the contract for clauses that might require taking a dispute to arbitration, where a neutral third party makes a ruling outside the court system. "That's less formal and may cost less money" compared with a court case, Saks said.

Seeking the return of deposit money or other fees also could make sense in small-claims court, where both parties can save on attorney fees. But that assumes the dispute doesn't exceed the \$3,500 Arizona maximum for that venue.

A discussion also might result in other types of compromise. For example, a photographer might offer to take photos of the wedding party in full dress — mindful of social-distancing measures — on another date and location even if the event itself was canceled, Saks said.

**TEAR-JERKER:** [The story behind the surprise wedding Hoda Kotb officiated for an Arizona couple](#)

## Seek other solutions

Esperança, a Phoenix nonprofit that provides food, medical help, clean water and other services to those in need, wasn't able to recoup the money it paid to a caterer for a fundraising breakfast it needed to cancel because of the pandemic. But the group was able to convince the caterer to donate food that would have been provided at the canceled event to benefit lower-income seniors and schoolchildren.

"We didn't get the money back, but we repurposed it to help Esperança fulfill its mission," said Fink, a managing director at HMA Public Relations who assisted the nonprofit, a client, with its cancellation negotiations.

Resolving that issue by diverting the food also helped to keep the caterer's workers employed. Disruptions triggered by the pandemic have "created a lot of need for creativity and patience," Fink said.

New-bride Dwivedi, who runs Diya Marketing, said she and her husband were able to make some lemonade out of their wedding-cancellation lemons by requesting that the people who watched the ceremony on Zoom make voluntary donations to a Venmo account. The \$5,500 raised is going to charities and to some of her acquaintances at catering companies and elsewhere who were thrown out of work by the outbreak.

While this effort wasn't directly tied to negotiating refunds or credits, Dwivedi cited it as an example of how to make the best of a tough situation by keeping an open mind to other possibilities. "We wanted something to feel good about," she said.



Bobby Borszich and Kirti Dwivedi had to cancel a hotel wedding for a much smaller private ceremony. They're pictured with her parents, father Ram and mother Anuradha Dwivedi. (Photo: Channele Sinclair)

## More attention to contingencies

The coronavirus outbreak likely will change the way contracts are written in the future, with more focus on quarantines, epidemics, pandemics and other factors that could trigger a cancellation, said Julie Pace, an attorney at Gammage & Burnham in Phoenix.

Before the outbreak, Arizonans were probably less mindful of cancellations compared with people in states more prone to severe weather disruptions and natural disasters, she said. That will change with the coronavirus experience fresh in everyone's memory.

Even existing contracts for near-term, upcoming events could be modified with the heightened health risks in mind. For example, a clause could be inserted rendering the contract null and void if CDC restrictions are in place such as the recent pronouncement discouraging large crowds.

"It's OK to amend a contract if you both agree to the new provisions," Saks said.

As a general negotiation tactic, he recommends remaining cordial but also cautions against showing too much flexibility or taking an overly friendly or conciliatory approach. That could undermine your arguments, should a case go to court, by making the whole dispute seem unimportant.

"Don't state in an email that (the dispute) is no big deal," Saks advised. "Don't act like the nice guy."

Incidentally, various vendors and other businesses might have commercial insurance policies that cover business interruptions, which a virus-induced shutdown might include. A disgruntled consumer should ask his or her vendor whether they have such coverage. If so, the vendor might be able to receive compensation from this while refunding the client's deposit money, satisfying both parties, Saks said.

# It never hurts to ask

While the process of seeking refunds and possibly rescheduling events can be arduous, the results can be well worth the trouble. Like many organizations, Rotary clubs from around central and northern Arizona were planning an annual meeting this year.

"We expected over 300 Rotarians and guests to gather for our annual conference," to be held in June at the Pointe Hilton Squaw Peak Resort in Phoenix, recalled David Simmer, the Rotary district governor who was organizing the event.

Club members were "excited to return to a venue that had served us so warmly five years before," he said.

But then the coronavirus outbreak spread, economy-lockdown efforts took hold, and the Rotary had to cancel. The group's contract with the Hilton provided for penalties in the event of a cancellation.

"The hit to Rotary was going to be hard, particularly for a service organization that squeezes every dollar possible into programs to help our communities, and ever more so at a time of great needs like during the pandemic," Simmer recalled.

So the Rotary group appealed for help, and the resort, after an initial delay, responded by stating that they understood the dilemma and would return the group's deposit money, Simmer said.

"You can't imagine the relief that we felt in being released from a contract that would have cost us many thousands of dollars that otherwise could have been put back directly into our communities," he said.