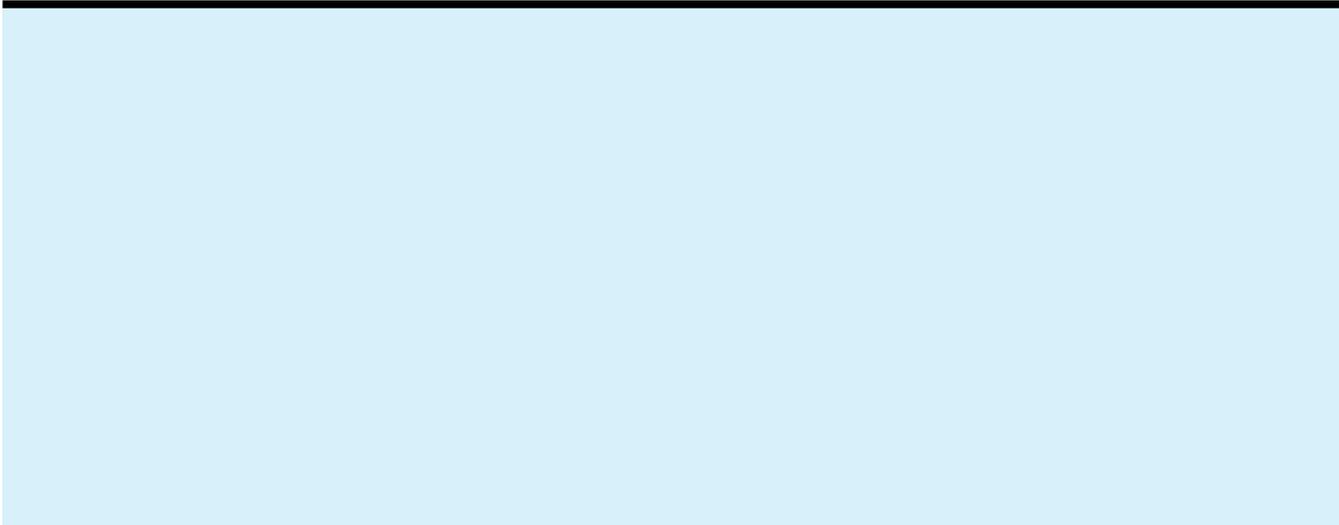


# Enforceability of Co-Tenancy Clauses in Four States



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State	Co-Tenancy Clauses Enforceable?	Force Majeure Effect?
New York	<p><i>Yes.</i> General contract law interpretation principles apply, and New York courts will enforce co-tenancy clauses as written. Tenants will not easily be found to have waived their rights under these clauses.</p>	<p><i>None identified.</i> Research suggests that courts would enforce a co-tenancy requirement even where the failure is due to force majeure unless the co-tenancy clause includes a specific carve-out. If, however, a tenant seeks money damages for a landlord’s breach of a co-tenancy requirement (rather than to exercise a contractually specified remedy) the measure of damages may be reduced by the amount that the tenant’s lease interest diminished in value due to factors outside the landlord’s control.</p>
California	<p><i>Probably.</i> Under California law, the validity of co-tenancy clauses depends on the facts and circumstances, and they are neither <i>per se</i> reasonable nor unreasonable. As with any contract provision, courts will give effect to the intentions of the parties, unless the contract is substantively or procedurally unconscionable, or suffers from another such major defect. If a co-tenancy clause grants a remedy of rent abatement to the tenant, that remedy must bear a reasonable relationship to the harm that the tenant suffers from the failure of co-tenancy – for example, the reduced rent may be calculated as a percentage of sales. If not reasonably related to the harm suffered, the rent abatement amounts to an unenforceable penalty.</p>	<p><i>None identified.</i> Research suggests that a court would need to consider whether an exception for a force majeure event was contemplated by the parties when drafting the co-tenancy clause within the context of a particular circumstance.</p>
Texas	<p><i>Yes.</i> General contract law interpretation principles apply, and Texas courts will enforce co-tenancy clauses and any logical inferences therefrom – for example, requiring that an adjacent tenant be a “supermarket” implies the requirement that it be an open and operating supermarket.</p>	<p><i>None identified.</i> Research suggests that courts would enforce a co-tenancy requirement even where the failure is due to force majeure unless the co-tenancy clause includes a specific carve-out.</p>

State	Co-Tenancy Clauses Enforceable?	Force Majeure Effect?
Illinois	<p><i>Yes.</i> General contract law interpretation principles apply, and where the language is unambiguous, co-tenancy clauses will be enforced as written.</p>	<p><i>None identified.</i> Research suggests that courts would enforce a co-tenancy requirement even where the failure is due to force majeure unless the co-tenancy clause includes a specific carve-out.</p>

