

Webinar

ULI Colorado: Force Majeure: COVID-19???'s Legal Implications for Real Estate

Date: April 09, 2020

00:00:02 --> 00:00:06: OK, great, well good afternoon everyone.

00:00:06 --> 00:00:09: Thank you for joining today's webinar.

00:00:09 --> 00:00:11: Think we're ready to get started?

00:00:11 --> 00:00:14: I'm Sarah Franklin, director with you like Colorado,

00:00:14 --> 00:00:17: I'm joined today by our staff Michael Adjei,

00:00:17 --> 00:00:20: who you will hear from momentarily as well as Marion

00:00:20 --> 00:00:23: Epic Annalise Martinez who are helping to run today's session

00:00:23 --> 00:00:24: behind the scenes.

00:00:28 --> 00:00:31: A few things I should mention before we jump in.

00:00:31 --> 00:00:34: All of you are currently muted and your videos are

00:00:34 --> 00:00:35: turned off.

00:00:35 --> 00:00:38: We will keep you muted throughout the duration of today's

00:00:38 --> 00:00:38: discussion.

00:00:38 --> 00:00:41: However, we'd like you to use the chat box feature

00:00:41 --> 00:00:44: of Zoom located at the bottom of your screens to

00:00:44 --> 00:00:47: direct any comments and your questions to staff and panelists.

00:00:47 --> 00:00:51: As you have questions, please type these into your chat

00:00:51 --> 00:00:53: box and our panel will address these.

00:00:53 --> 00:00:56: We will also be recording today's webinar and we will

00:00:56 --> 00:00:59: share a copy of the recording and presentation slides to

00:00:59 --> 00:01:02: the resources page on you like Colorado's website.

00:01:02 --> 00:01:05: If you're having any difficulties with your Internet connection,

00:01:05 --> 00:01:08: please know that you can always access today's session at

00:01:08 --> 00:01:09: a later date.

00:01:11 --> 00:01:14: Also, at the end of our webinar and beginning at

00:01:14 --> 00:01:14: 4:00 o'clock,

00:01:14 --> 00:01:17: we will transition into groups for virtual happy Hour.

00:01:17 --> 00:01:20: It's important to note that there is nothing you need

00:01:20 --> 00:01:22: to do on your end to join the happy Hour

00:01:22 --> 00:01:25: we have already assigned you to virtual groups and we

00:01:25 --> 00:01:28: will be controlling the placement for you.

00:01:28 --> 00:01:30: We invite you to remain on the webinar after 4:00

00:01:30 --> 00:01:34: o'clock to be put into your groups for continued conversation.

00:01:36 --> 00:01:39: Today we're excited to explore the topic of legal legal

00:01:39 --> 00:01:43: matters resulting from COVID-19 that may be important to you

00:01:43 --> 00:01:47: and your businesses and relationships with your clients and partners.

00:01:47 --> 00:01:50: We have an hour for this conversation which will include

00:01:50 --> 00:01:51: remarks from the coulement,

00:01:51 --> 00:01:55: Jonathan Pray and Rip Thomas who are shareholders with Brownstein,

00:01:55 --> 00:01:59: Hyatt, Farber, Schreck. Tored the end of today's discussion.

00:01:59 --> 00:02:04: On around 3:45 Nickola meant will begin taking your questions

00:02:04 --> 00:02:06: using the chat box feature of zoom.

00:02:06 --> 00:02:08: At 4:00 o'clock we invite all of you to remain

00:02:08 --> 00:02:09: on the web,

00:02:09 --> 00:02:11: and our cozy up to a beverage of your choice

00:02:11 --> 00:02:12: from your home refrigerators,

00:02:12 --> 00:02:15: and to be virtually placed in groups for informal discussion

00:02:15 --> 00:02:17: of the current real estate,

00:02:17 --> 00:02:19: environment, and anything else you wish to discuss.

00:02:22 --> 00:02:25: Now I'd like to turn it over to our Executive

00:02:25 --> 00:02:28: Director Michael A Tuesday for some UI updates and announcements.

00:02:28 --> 00:02:31: Thanks, Michael.

00:02:31 --> 00:02:33: Great, thank you so much Sarah.

00:02:33 --> 00:02:37: Anne staff and friends at Brownstein and welcome to our

00:02:37 --> 00:02:37: guests.

00:02:37 --> 00:02:40: We have a really good crowd here.

00:02:40 --> 00:02:42: I see and first of all I want to wish

00:02:42 --> 00:02:47: everyone good health and continued safety in this current challenging

00:02:47 --> 00:02:48: situation.

00:02:48 --> 00:02:51: Talk a little bit about what you'll I is doing.

00:02:51 --> 00:02:55: We're actually busier than ever planning these webinars,

00:02:55 --> 00:03:00: gathering information and sharing lessons learned and other vital info

00:03:00 --> 00:03:02: for to help us all deal with these.

00:03:02 --> 00:03:07: Important times we had a really successful opening webinar last

00:03:07 --> 00:03:07: week.

00:03:07 --> 00:03:12: Kind of the real estate overview response to COVID-19 and

00:03:12 --> 00:03:16: we had a 250 people attend that and really excellent

00:03:16 --> 00:03:17: information.

00:03:17 --> 00:03:20: We're very happy to share that you'll I is also

00:03:20 --> 00:03:23: hosting a number of webinars.

00:03:23 --> 00:03:27: Will be sharing information on those through our E news

00:03:27 --> 00:03:30: that we receive twice a week and we feel that

00:03:30 --> 00:03:33: now more than ever is a time for us to

00:03:33 --> 00:03:36: be. Reaching out to our members and being helpful in

00:03:36 --> 00:03:37: this time.

00:03:37 --> 00:03:40: So in addition to the usual you align mission of

00:03:40 --> 00:03:43: creating sustainable and thriving places worldwide,

00:03:43 --> 00:03:47: which is something we'll get back to when this passes,

00:03:47 --> 00:03:50: we have we have a lot of important work to

00:03:50 --> 00:03:50: do.

00:03:50 --> 00:03:53: You may have heard that you'll I Toronto spring meeting

00:03:53 --> 00:03:55: has been postponed until 2023.

00:03:55 --> 00:03:59: However, Spring Meeting 2021 is very much on in Denver

00:03:59 --> 00:04:02: and we are gathering our local host committee in the

00:04:02 --> 00:04:05: next month or so to start planning for that.

00:04:05 --> 00:04:07: I think it's going to be quite a big meeting.

00:04:07 --> 00:04:10: People have a thirst together after missing this year,

00:04:10 --> 00:04:13: so you can register for any of our webinars are

00:04:13 --> 00:04:14: all free to members.

00:04:14 --> 00:04:16: We started off doing one a week,

00:04:16 --> 00:04:19: will slow down a little bit on that after next

00:04:19 --> 00:04:19: week.

00:04:19 --> 00:04:22: I think people are getting saturated but will hope to

00:04:22 --> 00:04:22: join you.

00:04:22 --> 00:04:24: There is one offered by national.

00:04:24 --> 00:04:28: You lie in April. 7th Considerations for multifamily and

00:04:28 --> 00:04:28: affordable

00:04:28 --> 00:04:30: housing.

00:04:28 --> 00:04:30: And then we're doing one on Friday,

00:04:30 --> 00:04:33: April 10th on the COVID-19 impact on office retail and

00:04:34 --> 00:04:36: actually apartment an industrial leases.

00:04:36 --> 00:04:39: And we're gathering a great panel for that as well,

00:04:39 --> 00:04:40: so again, those are free.

00:04:40 --> 00:04:41: Next slide please.

00:04:47 --> 00:04:51: We have remaining a healthy organization thanks to our

00:04:51 --> 00:04:52: 2020

00:04:51 --> 00:04:52: annual sponsors.

00:04:52 --> 00:04:55: There were 57 of those and we had a banner
00:04:55 --> 00:04:56: year for sponsorship,
00:04:56 --> 00:04:59: so that's going to allow us to continue our work,
00:04:59 --> 00:05:03: even anticipating reduced revenues for the remainder of the
fiscal
00:05:03 --> 00:05:04: year.
00:05:04 --> 00:05:06: And we're really grateful to these folks.
00:05:06 --> 00:05:09: We support ourselves entirely within Colorado,
00:05:09 --> 00:05:13: and there are allowing us to present day session and
00:05:13 --> 00:05:17: other information will be assigned to you in the future.
00:05:17 --> 00:05:18: Next slide, please.
00:05:20 --> 00:05:22: OK, now I have to mention to the happy hour
00:05:23 --> 00:05:25: I have queued up a great divide India pale L
00:05:25 --> 00:05:28: and I hope your have your drinks in hand.
00:05:28 --> 00:05:31: I promise not to start drinking before 4:00 o'clock.
00:05:31 --> 00:05:34: So Nico lament is been a great friend to you
00:05:34 --> 00:05:35: alive for a long time.
00:05:35 --> 00:05:37: She's been a member for 15 years.
00:05:37 --> 00:05:39: I've been with you like 15 years.
00:05:39 --> 00:05:42: I've worked for quite a bit in that time.
00:05:42 --> 00:05:44: She is a chair of Brownstein,
00:05:44 --> 00:05:47: Heart Hyatt, Farber and Trex real estate Department.
00:05:47 --> 00:05:50: She manage has managed portfolio transactions.
00:05:50 --> 00:05:53: With as many as 276 properties in a single portfolio
00:05:53 --> 00:05:55: and an excess of a billion and a half and
00:05:55 --> 00:05:58: assets in diverse industries including hotels,
00:05:58 --> 00:06:01: golf courses, ski areas, health care facilities,
00:06:01 --> 00:06:04: manufactured housing communities, South Lake clubs.
00:06:04 --> 00:06:06: She is previously served as chair of the Perms,
00:06:06 --> 00:06:09: National Hospitality Resort and Recreation Group,
00:06:09 --> 00:06:12: and is the Co chair of the terms Women's Leadership
00:06:12 --> 00:06:13: Initiative.
00:06:13 --> 00:06:16: She is a full member of You Alliance Service on
00:06:16 --> 00:06:18: the leadership team of the Recreation,
00:06:18 --> 00:06:21: Development and National Product Council.
00:06:21 --> 00:06:23: So we're so grateful to you and your team for
00:06:23 --> 00:06:23: being here today,
00:06:23 --> 00:06:25: and I'll turn over the presentation to you.
00:06:25 --> 00:06:27: So thank you again.
00:06:27 --> 00:06:29: Great thank you, Michael Ann.
00:06:29 --> 00:06:31: It's you know it's after three o'clock.
00:06:31 --> 00:06:34: Frankly, it's afternoon so no one would find fault if

00:06:34 --> 00:06:37: you were starting to step on your ending pale Ale.
00:06:37 --> 00:06:40: So I think that the time we know no longer
00:06:40 --> 00:06:42: know what time of day or what day of the
00:06:42 --> 00:06:43: week it is.
00:06:43 --> 00:06:45: So feel free to go ahead and imbibe anybody on
00:06:45 --> 00:06:46: the phone.
00:06:46 --> 00:06:48: So I just want to take a few minutes.
00:06:48 --> 00:06:51: My colleagues that are going to go into more detail
00:06:51 --> 00:06:53: on two very specific topics have slides.
00:06:53 --> 00:06:57: I didn't prepare slides here just because I'm trying to
00:06:57 --> 00:06:58: talk from the very.
00:06:58 --> 00:07:02: Big picture about things that are facing us from a
00:07:02 --> 00:07:05: legal perspective on real estate on a cloud.
00:07:05 --> 00:07:09: Legal in as much practical legal perspective of what we're
00:07:09 --> 00:07:13: encountering and the two things that they will be going
00:07:13 --> 00:07:15: into our force measure.
00:07:15 --> 00:07:19: And of course everything around me is ringing,
00:07:19 --> 00:07:21: force majeure and and leasing issues.
00:07:21 --> 00:07:25: But what I wanted to talk about again was sort
00:07:25 --> 00:07:29: of the bigger picture because we are experiencing that.
00:07:29 --> 00:07:32: Real estate projects are still trying to go forward.
00:07:32 --> 00:07:36: Transactions are still trying to move forward and this whole
00:07:36 --> 00:07:37: stay at home,
00:07:37 --> 00:07:41: work from home, everybody shelter in place is creating some
00:07:41 --> 00:07:45: very technical difficulties for being a real real estate
practitioner
00:07:45 --> 00:07:47: and trying to get deals done.
00:07:47 --> 00:07:51: So first just looking at it from the perspective of
00:07:51 --> 00:07:51: you know,
00:07:51 --> 00:07:55: purchase agreements. If you're lucky enough to be under
purchase
00:07:55 --> 00:07:56: agreement,
00:07:56 --> 00:08:00: either buy or sell in and you are still moving
00:08:00 --> 00:08:01: forward with that.
00:08:01 --> 00:08:05: You know that the technical realities of dealing with that
00:08:05 --> 00:08:08: that we're trying to sort through is now how do
00:08:09 --> 00:08:10: you move forward?
00:08:10 --> 00:08:13: If you are in the position that you can actually
00:08:13 --> 00:08:14: close,
00:08:14 --> 00:08:17: and we've seen some deals closed in the last couple
00:08:17 --> 00:08:18: of weeks,
00:08:18 --> 00:08:22: you have the reality that clerk and recorders offices have
00:08:22 --> 00:08:25: all shut down in our state and elsewhere.

00:08:25 --> 00:08:29: And while these clerk and recorders offices are set up
00:08:29 --> 00:08:31: for electronic filings,
00:08:31 --> 00:08:35: it is. Varied across jurisdiction as to whether or not
00:08:35 --> 00:08:38: they're actually accepting electronic filings.
00:08:38 --> 00:08:42: Because you know the filing occurs electronically,
00:08:42 --> 00:08:45: but they may not be set up for their their
00:08:45 --> 00:08:49: clerks staff to actually deal with that recording remotely,
00:08:49 --> 00:08:52: and so when this all started,
00:08:52 --> 00:08:56: they were, you know, if somebody actually in the Clerks
00:08:56 --> 00:08:59: Office to deal with those the recordings,
00:08:59 --> 00:09:02: are they going to allow that you according.
00:09:02 --> 00:09:07: To continue. Or are you doing the recordings and they're
00:09:07 --> 00:09:09: sort of lingering out there,
00:09:09 --> 00:09:14: and another land? I think that most jurisdictions are getting
00:09:14 --> 00:09:15: a handle on this,
00:09:15 --> 00:09:18: but I'll note it is still an issue and I
00:09:18 --> 00:09:23: will say that recordings are definitely delayed in most
jurisdictions,
00:09:23 --> 00:09:26: and that if you're looking at all at,
00:09:26 --> 00:09:30: you know a pending closing or modifying alone or doing
00:09:30 --> 00:09:35: anything where you're going to have to record legal
documentation
00:09:35 --> 00:09:36: with the County.
00:09:36 --> 00:09:40: Then you need to be very careful and check in
00:09:40 --> 00:09:41: with that County.
00:09:41 --> 00:09:45: Again. Everybody is kind of dealing with this in a
00:09:45 --> 00:09:46: different take,
00:09:46 --> 00:09:49: so you need to know in advance as to how
00:09:50 --> 00:09:52: this goes and how they're treating it,
00:09:52 --> 00:09:56: and then the follow up that results from that is
00:09:56 --> 00:10:01: how title insurance and title companies are working with this
00:10:01 --> 00:10:05: issue of the recordings and whether the offices are closed
00:10:05 --> 00:10:09: and the delay. When this first started,
00:10:09 --> 00:10:12: you had a variation across the board of whether title
00:10:12 --> 00:10:16: companies were going to be providing gap coverage,
00:10:16 --> 00:10:18: as would be traditionally provided,
00:10:18 --> 00:10:22: because the gap potentially could be so long from when
00:10:22 --> 00:10:27: we technically he recorded two when it actually got recorded
00:10:27 --> 00:10:28: and of record.
00:10:28 --> 00:10:31: So title companies are taking different stances.
00:10:31 --> 00:10:35: Again, I know this is not a very specific.
00:10:35 --> 00:10:38: Response I can't provide that to you 'cause every title

00:10:38 --> 00:10:42: company is treating this a little differently as to how
00:10:42 --> 00:10:45: they are dealing with the delays or the possibility that
00:10:45 --> 00:10:49: you can't get recorded right now in a jurisdiction.
00:10:49 --> 00:10:52: So again, you need to be very careful and talk
00:10:52 --> 00:10:55: in great detail with the title company that's handling your
00:10:55 --> 00:10:59: different transactions as to how that is going to work
00:10:59 --> 00:11:03: with the recordings and what kind of coverage they are
00:11:03 --> 00:11:05: willing to provide.
00:11:05 --> 00:11:08: So that's for existing purchase agreements.
00:11:08 --> 00:11:11: Also, an existing purchase agreements if you're not to the
00:11:11 --> 00:11:12: stage of closing,
00:11:12 --> 00:11:15: but you're sort of in process.
00:11:15 --> 00:11:18: There's a lot of analysis going on as to how
00:11:19 --> 00:11:23: the document might be treated relative to your diligence.
00:11:23 --> 00:11:27: Or other timing deadlines that are out there,
00:11:27 --> 00:11:32: such as getting governmental entitlements and those
deadlines,
00:11:32 --> 00:11:37: whether they can be extended or not because of the
00:11:37 --> 00:11:40: current pandemic purchase agreements,
00:11:40 --> 00:11:46: unlike. Other documents, such as loan agreements or lease
agreements
00:11:46 --> 00:11:49: that Jonathan will go into more detail.
00:11:49 --> 00:11:53: Typically don't have a force majeure clause,
00:11:53 --> 00:11:59: or certainly don't have them that are as heavily negotiated
00:11:59 --> 00:12:03: or spelled out as you might find in a loan
00:12:03 --> 00:12:07: agreement or construction agreement.
00:12:07 --> 00:12:12: If anything, they say sometimes only reference casualty and
condemnation
00:12:12 --> 00:12:13: provisions,
00:12:13 --> 00:12:17: and how do the properties and the parties deal with
00:12:17 --> 00:12:18: it?
00:12:18 --> 00:12:20: And the delay is going forward there,
00:12:20 --> 00:12:24: but very few of them would have language that would
00:12:24 --> 00:12:29: specifically deal with that type of pandemic that we're
encountering
00:12:30 --> 00:12:33: right now and how that might create a change in
00:12:33 --> 00:12:37: the deadlines and timings of things so.
00:12:37 --> 00:12:41: We're getting a lot of questions relative to that and
00:12:41 --> 00:12:44: looking very specifically with into the contracts.
00:12:44 --> 00:12:46: To do that, I will say as people now are
00:12:46 --> 00:12:50: entering into new purchase agreements and we are seeing
those
00:12:50 --> 00:12:53: out there that there are now new clauses that are

00:12:53 --> 00:12:56: being accounted for. Every one of these kind of factual
00:12:56 --> 00:12:59: situations as this new legal clauses that we lawyers like
00:13:00 --> 00:13:00: to draft up.
00:13:00 --> 00:13:04: Because now we could have another pandemic in the future.
00:13:04 --> 00:13:08: Hopefully that's very unlikely, but people want to account for
00:13:08 --> 00:13:09: this an account for.
00:13:09 --> 00:13:12: Deadline extensions and again where this plays out is you
00:13:12 --> 00:13:15: know how long does this pandemic continue on?
00:13:15 --> 00:13:18: If you're just going into a purchase agreement,
00:13:18 --> 00:13:21: there's a lot of 3rd party typical consultant reports that
00:13:21 --> 00:13:22: you can't get it.
00:13:22 --> 00:13:24: You probably can't get a zoning report.
00:13:24 --> 00:13:27: You may have difficulty getting your survey.
00:13:27 --> 00:13:30: The title commitment. Hopefully you can still get,
00:13:30 --> 00:13:33: but we know that this is impacting all of those
00:13:33 --> 00:13:37: deadlines because Workforce has changed and frankly you
can't get
00:13:37 --> 00:13:38: people on site,
00:13:38 --> 00:13:41: so that's that's dealing with purchase agreements.
00:13:41 --> 00:13:43: Um? And again, it's it's playing into a lot of
00:13:44 --> 00:13:47: that how you're signing them now and how you're closing.
00:13:47 --> 00:13:49: And then I would say the next,
00:13:49 --> 00:13:52: the next big thing that we're really looking at and
00:13:52 --> 00:13:54: coming up with on the legal front is if you're
00:13:54 --> 00:13:57: under purchase agreement or you already own a piece of
00:13:57 --> 00:14:00: land and you're moving moving forward with development,
00:14:00 --> 00:14:02: which a number of people are.
00:14:02 --> 00:14:06: Because the development process takes so long to get
entitlements
00:14:06 --> 00:14:08: and get to that ready stage that think the real
00:14:08 --> 00:14:11: estate community is looking at as is this as an
00:14:11 --> 00:14:13: opportunity to get through that.
00:14:13 --> 00:14:16: And by the time the project is actually completed,
00:14:16 --> 00:14:19: or shovel in the ground that will be through the
00:14:19 --> 00:14:19: crisis.
00:14:19 --> 00:14:23: And so people are definitely trying to move forward with
00:14:23 --> 00:14:24: their entitlements in there.
00:14:24 --> 00:14:26: In
00:14:26 --> 00:14:29: their development process.
00:14:29 --> 00:14:32: One of the big hurdles that you have with moving
00:14:33 --> 00:14:37: forward in your in your entitlement process is that we
00:14:37 --> 00:14:39: are all required to stay at home,

00:14:39 --> 00:14:46: and while. Most municipalities are treating their City Council meetings

00:14:46 --> 00:14:53: and Planning Commission meetings are definitely sort of essential services

00:14:53 --> 00:14:57: and they can proceed with having those hearings.

00:14:57 --> 00:15:01: They are largely doing them telephonically.

00:15:01 --> 00:15:05: And there is not a.

00:15:05 --> 00:15:09: Consistent means by which they've made the decision to move

00:15:09 --> 00:15:11: forward with these hearings.

00:15:11 --> 00:15:14: And the real issue on that becomes whether the hearing

00:15:15 --> 00:15:17: is to take place is legislative,

00:15:17 --> 00:15:20: and I know most city councils are moving forward with

00:15:20 --> 00:15:25: legislative items because that doesn't require public comment.

00:15:25 --> 00:15:28: So if it's a city initiated ordinance or sort of

00:15:28 --> 00:15:32: normal city business that doesn't require any public comment,

00:15:32 --> 00:15:38: most municipalities and jurisdictions are feeling very comfortable with moving

00:15:38 --> 00:15:42: full world with some sort of electronic telephonic meeting.

00:15:42 --> 00:15:47: The hang up becomes that most of your entitlements are.

00:15:47 --> 00:15:52: Would take place in what is my quasi judicial hearing?

00:15:52 --> 00:15:57: An quasi judicial they need to allow for public comment.

00:15:57 --> 00:15:59: And the real question is,

00:15:59 --> 00:16:05: are they providing sufficient public comment accommodation when you're doing

00:16:05 --> 00:16:09: it over the Internet over the telephone and that method?

00:16:09 --> 00:16:13: Because there is a perceived lack of access for individuals

00:16:13 --> 00:16:18: who wouldn't have access to the Internet to participate in

00:16:18 --> 00:16:19: that public meeting.

00:16:19 --> 00:16:24: And that's particularly heightened by the fact that we don't

00:16:24 --> 00:16:27: even have libraries where they might normally have.

00:16:27 --> 00:16:31: Access to computers in the Internet.

00:16:31 --> 00:16:34: So what this means is that for the moment a

00:16:35 --> 00:16:38: number of public hearings on zoning approvals,

00:16:38 --> 00:16:44: Puds plants, annexations are delayed until jurisdictions can figure out

00:16:44 --> 00:16:48: how to meet a standard that they feel satisfactory to

00:16:48 --> 00:16:53: not be challenged in the future that they gave public

00:16:53 --> 00:16:58: sufficient time and insufficient availability to comment on this.

00:16:58 --> 00:17:02: And while it's very frustrating to developers.

00:17:02 --> 00:17:04: Developers don't want to push too ****

00:17:04 --> 00:17:07: ** that either because they don't want to create a

00:17:07 --> 00:17:10: situation in which someone could easily come in and challenge

00:17:10 --> 00:17:14: and say that there was not sufficient availability for public

00:17:14 --> 00:17:16: comment on certain size of projects.

00:17:16 --> 00:17:19: But this is definitely holding up projects across across the

00:17:19 --> 00:17:22: street and across the country while they figure this out.

00:17:22 --> 00:17:25: And I would say that most jurisdictions are trying to

00:17:25 --> 00:17:26: figure this out,

00:17:26 --> 00:17:28: but there is not yet an answer there and then

00:17:29 --> 00:17:29: the second,

00:17:29 --> 00:17:32: the second thing that goes along with development is if

00:17:32 --> 00:17:33: you know some.

00:17:33 --> 00:17:37: If you're lucky enough to already have your entitlements.

00:17:37 --> 00:17:40: And be under construction.

00:17:40 --> 00:17:43: So we have it on fairly good statement.

00:17:43 --> 00:17:46: In another statement came out today from the governor's office.

00:17:46 --> 00:17:50: That construction is considered an essential service even,

00:17:50 --> 00:17:53: even though it's not tie directly to the construction of

00:17:53 --> 00:17:56: an essential service that you don't have to.

00:17:56 --> 00:17:59: As an example of the building at the hospital,

00:17:59 --> 00:18:01: the continue with your construction,

00:18:01 --> 00:18:05: but you do need to be continuing your construction.

00:18:05 --> 00:18:09: In a manner that is reflective of what the current

00:18:09 --> 00:18:09: standards are.

00:18:09 --> 00:18:12: So trying to keep people the six feet apart while

00:18:13 --> 00:18:15: they're working and and minding those things.

00:18:15 --> 00:18:18: But the issue really comes even if you're able to

00:18:18 --> 00:18:21: continue construction under those standards.

00:18:21 --> 00:18:24: Whether or not you can get inspections along the way,

00:18:24 --> 00:18:28: jurisdictions again are struggling with what they determined to be

00:18:28 --> 00:18:29: essential,

00:18:29 --> 00:18:32: whether they have the staffing to go out and do

00:18:32 --> 00:18:33: these inspections.

00:18:33 --> 00:18:36: Some jurisdictions are allowing for certain types.

00:18:36 --> 00:18:40: Of inspections to happen by video depending at the stage

00:18:40 --> 00:18:43: and the type of inspection that's required.

00:18:43 --> 00:18:47: Others do still require in person inspections.

00:18:47 --> 00:18:51: Some jurisdictions have just said find out they're not doing

00:18:51 --> 00:18:55: inspections right now with the stay at home in place,

00:18:55 --> 00:18:59: so again it's very jurisdictionally driven.

00:18:59 --> 00:19:02: And that can really cause a delay.

00:19:02 --> 00:19:05: Obviously if you are under way and in a process,
00:19:05 --> 00:19:09: so we're happy to hear that real estate development is
00:19:09 --> 00:19:11: continuing to move forward,
00:19:11 --> 00:19:15: but it does. There are definitely some hiccups as we
00:19:15 --> 00:19:20: try to buy Lancelin get entitled and actually develop and
00:19:20 --> 00:19:21: construct on it.
00:19:21 --> 00:19:26: So now things that can't be overcome but just another
00:19:26 --> 00:19:30: layer of complexity to get those things done.
00:19:30 --> 00:19:33: And then there's just the one other thing that I'll
00:19:33 --> 00:19:38: mention very briefly before I introduce my colleagues is the,
00:19:38 --> 00:19:42: you know. There's just a constant flow of other questions
00:19:42 --> 00:19:44: coming up from real property from,
00:19:44 --> 00:19:49: you know, moratoriums on evictions and foreclosures to the
seizure
00:19:49 --> 00:19:52: of real property for use by the government,
00:19:52 --> 00:19:55: as you know, sort of.
00:19:55 --> 00:20:02: Additional shelters for shelter in place or for quarantine
victims,
00:20:02 --> 00:20:06: or for hospitalization, or. Frankly,
00:20:06 --> 00:20:08: to better enforce the stay at home.
00:20:08 --> 00:20:11: So these are things that are we are grappling with
00:20:11 --> 00:20:12: daily and again,
00:20:12 --> 00:20:15: they vary by jurisdiction. They vary by state,
00:20:15 --> 00:20:18: but it is amazing the amount of stuff that comes
00:20:18 --> 00:20:21: up that deals with real property.
00:20:21 --> 00:20:23: We lawyers or kind of geeking out on this a
00:20:23 --> 00:20:26: little bit because it is like a law school exam
00:20:26 --> 00:20:30: question that you know you post somebody with the
pandemic
00:20:30 --> 00:20:33: name every possible legal issue you can get them and
00:20:34 --> 00:20:35: you start to think of him.
00:20:35 --> 00:20:39: And then there's there's 10 more behind it so.
00:20:39 --> 00:20:44: With that I am going to introduce my colleague.
00:20:44 --> 00:20:48: Jonathan Pray Jonathan is shareholder in our litigation
group.
00:20:48 --> 00:20:50: He also is general counsel to our firm,
00:20:50 --> 00:20:53: so he's got a whole different issues listed.
00:20:53 --> 00:20:57: He's dealing with their by Jonathan's background has been in
00:20:57 --> 00:20:58: construction for a long time.
00:20:58 --> 00:21:01: He is who I turned to for all my questions
00:21:01 --> 00:21:04: there and he said we quickly grabbed on the phone
00:21:04 --> 00:21:08: to start talking about force measure because that is definitely
00:21:08 --> 00:21:11: the clause of the day when this all kicked off.

00:21:11 --> 00:21:14: So Jonathan, I'm going to turn it over to you
00:21:14 --> 00:21:17: and let you go into force majeure.
00:21:17 --> 00:21:18: Awesome thanks so much Nicole.
00:21:18 --> 00:21:22: I appreciate the introduction.
00:21:22 --> 00:21:25: You go to the next slide perfect so we've all
00:21:25 --> 00:21:28: heard particularly last couple weeks.
00:21:28 --> 00:21:33: The term force majeure thrown around pretty liberally and not
00:21:33 --> 00:21:37: a lot of people realize that in most instances,
00:21:37 --> 00:21:41: at least in the types of deals and transactions,
00:21:41 --> 00:21:45: and matters that were all involved with fourth major isn't
00:21:45 --> 00:21:49: isn't a concept that sort of exists in common law
00:21:49 --> 00:21:52: exists out in the legal ether.
00:21:52 --> 00:21:55: Force majeure is really a contractual com concept,
00:21:55 --> 00:21:58: for the most part, in the risk of a force
00:21:58 --> 00:21:59: measure.
00:21:59 --> 00:22:03: Event will ordinarily be addressed in the language of the
00:22:03 --> 00:22:04: parties contract.
00:22:04 --> 00:22:08: So the first sort of piece of advice in trying
00:22:08 --> 00:22:12: to figure out whether you have or force measure event
00:22:12 --> 00:22:14: is going to be to look at the contract,
00:22:14 --> 00:22:18: and I would also say before we dive into kind
00:22:18 --> 00:22:22: of a specific three step process that that we've set
00:22:22 --> 00:22:24: out for analyzing this issue.
00:22:24 --> 00:22:28: It's important to realize that force majeure is a concept
00:22:28 --> 00:22:32: that gives one party or the other right to assert
00:22:32 --> 00:22:35: that their performance obligation is excused.
00:22:35 --> 00:22:39: In other words, they don't have to do something in
00:22:39 --> 00:22:40: a specific way.
00:22:40 --> 00:22:44: Going to specific time, or maybe even at all based
00:22:44 --> 00:22:47: on the obligations in the contract.
00:22:47 --> 00:22:50: So in in the landlord tenant context,
00:22:50 --> 00:22:53: you know that might be the obligation to operate for
00:22:54 --> 00:22:54: a tenant.
00:22:54 --> 00:22:57: Operate a business continuously here.
00:22:57 --> 00:23:00: If you have a restaurant or a movie theater or
00:23:00 --> 00:23:03: something like that in in the Denver area,
00:23:03 --> 00:23:07: certainly that would be an obligation that most people would
00:23:07 --> 00:23:09: be assuming is excused,
00:23:09 --> 00:23:10: so it's not. It's not.
00:23:10 --> 00:23:14: In most instances the right to terminate a contract,
00:23:14 --> 00:23:19: you're instead talking about a specific obligation under the
contract

00:23:19 --> 00:23:22: that is excused or delayed during the period of the
00:23:22 --> 00:23:23: force.
00:23:23 --> 00:23:25: Mature first major event. So,
00:23:25 --> 00:23:28: assuming your contract has a force majeure clause,
00:23:28 --> 00:23:31: there's really kind of a three step process that you
00:23:31 --> 00:23:33: walk through so we can take a look at the
00:23:33 --> 00:23:34: next slide.
00:23:40 --> 00:23:42: There we go. Thank you.
00:23:42 --> 00:23:46: So step one, does your contract ever force majeure clause?
00:23:46 --> 00:23:48: As I said a few minutes ago,
00:23:48 --> 00:23:54: most of the sophisticated commercial contracts that we're
dealing with
00:23:54 --> 00:23:57: will have one in some shape or another.
00:23:57 --> 00:24:01: It might not say in the section heading 4th measure,
00:24:01 --> 00:24:05: it could instead talk about events outside of one party's
00:24:05 --> 00:24:06: control or.
00:24:06 --> 00:24:09: On the ability to delay performance,
00:24:09 --> 00:24:12: we've been looking at a lot of EA agreements over
00:24:12 --> 00:24:14: the last last couple weeks,
00:24:14 --> 00:24:18: and it's interesting because the AIA agreement doesn't have
a
00:24:18 --> 00:24:21: provision that says force measure at the top instead has
00:24:21 --> 00:24:25: a provision that talks about when the contractor is entitled
00:24:25 --> 00:24:27: to more time for performance.
00:24:27 --> 00:24:31: In other words, they are entitled to a certain delay
00:24:31 --> 00:24:35: in their obligation to reach substantial completion of the
project,
00:24:35 --> 00:24:37: and that's how that contract.
00:24:37 --> 00:24:41: Deals with the Force measure obligation or first measure
rights.
00:24:41 --> 00:24:45: So once you find that force majeure provision,
00:24:45 --> 00:24:48: the question then becomes what triggers it,
00:24:48 --> 00:24:51: and as is relevant to current circumstances,
00:24:51 --> 00:24:54: does a pandemic trigger the force majeure clause?
00:24:54 --> 00:24:58: Were bout a government order?
00:24:58 --> 00:25:01: There will frequently be a list of force majeure events
00:25:02 --> 00:25:05: in this clause that will specifically trigger it,
00:25:05 --> 00:25:08: and then there will sometimes be a catch all that
00:25:08 --> 00:25:12: says or any other event or circumstance that is outside
00:25:12 --> 00:25:15: of the performing parties control or something.
00:25:15 --> 00:25:17: It's a word to that effect,
00:25:17 --> 00:25:21: and here one would certainly think that the development of
00:25:21 --> 00:25:26: an international pandemic would probably be outside of the

parties
00:25:26 --> 00:25:28: to the contract's control.
00:25:28 --> 00:25:30: So if we can go to the next slide,
00:25:30 --> 00:25:34: assuming that you have found that force majeure clause and
00:25:34 --> 00:25:38: you have determined that a pandemic or a government order
00:25:38 --> 00:25:43: requiring you to close your business triggers the force
majeure
00:25:43 --> 00:25:48: clause, the next step becomes what the standard of
performance
00:25:48 --> 00:25:49: is in other words.
00:25:49 --> 00:25:53: What does the fact that a pandemic has has a
00:25:53 --> 00:25:53: curd?
00:25:53 --> 00:25:57: What effect must that have on your performance?
00:25:57 --> 00:25:59: So some clauses will say?
00:25:59 --> 00:26:02: If a force measure event has happened,
00:26:02 --> 00:26:06: that and the IT is become impossible for the performing
00:26:06 --> 00:26:09: party to performance obligations,
00:26:09 --> 00:26:12: then they're excused from from performing.
00:26:12 --> 00:26:17: Other clauses will have different standards of performance,
00:26:17 --> 00:26:22: like the performance has to be impractical or unreasonably
difficult,
00:26:22 --> 00:26:24: or some other standard like that,
00:26:24 --> 00:26:29: and in some instances there won't be a standard listed
00:26:29 --> 00:26:29: at all.
00:26:29 --> 00:26:31: So the question becomes so,
00:26:31 --> 00:26:35: then how do you analyze that?
00:26:35 --> 00:26:39: In other words, if the clause requires that performance must
00:26:39 --> 00:26:42: be impossible as a result of the pandemic,
00:26:42 --> 00:26:46: what does that mean? There's there's tons and tons of
00:26:46 --> 00:26:47: case on the subject,
00:26:47 --> 00:26:52: but impossibility is really, really high standard.
00:26:52 --> 00:26:57: Practical or impractical ability is not strict impossibility,
00:26:57 --> 00:26:59: but it's it's pretty close.
00:26:59 --> 00:27:03: It's it's essentially that it would be nearly impossible or
00:27:03 --> 00:27:08: or commercially unreasonable to do it under current
circumstances.
00:27:08 --> 00:27:11: It's a really high standard.
00:27:11 --> 00:27:14: To me, the circumstance that I've seen a couple of
00:27:14 --> 00:27:17: times over the last the last few weeks that I
00:27:17 --> 00:27:21: think is the most interesting is where there is no
00:27:21 --> 00:27:23: standard at all. In other words,
00:27:23 --> 00:27:26: it says that if a fourth major event occurs,
00:27:26 --> 00:27:29: the party's performance is excused altogether,

00:27:29 --> 00:27:33: and obviously that would be a standard that would be
00:27:33 --> 00:27:33: very,
00:27:33 --> 00:27:37: very favorable for the party that is seeking not to
00:27:37 --> 00:27:39: perform its its obligation.
00:27:39 --> 00:27:43: So really important, realizers. There's the two components to
the
00:27:43 --> 00:27:43: clause.
00:27:43 --> 00:27:48: There's the triggering event, and then there has to be
00:27:48 --> 00:27:50: the result on performance.
00:27:50 --> 00:27:52: So if we go to the next slide,
00:27:52 --> 00:27:55: the third step in the analysis is if you've met
00:27:55 --> 00:27:57: the first 2 hurdles.
00:27:57 --> 00:28:01: In other words, a pandemic qualifies as a force measure
00:28:01 --> 00:28:05: event and your performance is now impossible as a result
00:28:05 --> 00:28:05: of it.
00:28:05 --> 00:28:07: What do you have to do?
00:28:07 --> 00:28:11: What does the contract require that you do infrequently?
00:28:11 --> 00:28:15: There will be a notice provision that you have to
00:28:15 --> 00:28:20: follow and following that prescribed notice process could be.
00:28:20 --> 00:28:22: A requirement of your contract.
00:28:22 --> 00:28:26: In other words, either you wave your ability to assert
00:28:26 --> 00:28:27: force measure,
00:28:27 --> 00:28:30: or the other party to the agreement waives its ability
00:28:30 --> 00:28:32: to assert force measure.
00:28:32 --> 00:28:35: If you don't follow the right notice procedure and then
00:28:35 --> 00:28:39: notice procedure could have a number of different elements,
00:28:39 --> 00:28:41: it could have a timing component.
00:28:41 --> 00:28:44: It could have more requirement that it be in writing
00:28:44 --> 00:28:45: or via email.
00:28:45 --> 00:28:49: There could be a method of delivery requirement that has
00:28:49 --> 00:28:51: to be sent by FedEx or.
00:28:51 --> 00:28:54: Got to get a fax or something like that and
00:28:54 --> 00:28:55: older agreement.
00:28:55 --> 00:28:58: You probably also specifies the recipients to notice.
00:28:58 --> 00:29:02: Parties that have to get that notice it forced measure
00:29:02 --> 00:29:03: for it to be effective.
00:29:03 --> 00:29:07: The piece that I worry about folks stubbing their toes
00:29:07 --> 00:29:09: on a little bit in this in this.
00:29:09 --> 00:29:12: Is the timing component. In other words,
00:29:12 --> 00:29:14: if you have to give event,
00:29:14 --> 00:29:16: I give notice within a seven day.
00:29:16 --> 00:29:19: That can be. That can be pretty quick under the

00:29:19 --> 00:29:20: circumstances,
00:29:20 --> 00:29:22: particularly if you have to.
00:29:22 --> 00:29:25: Then have to figure out how to you know,
00:29:25 --> 00:29:29: deliver a FedEx or or do whatever other mechanical things
00:29:29 --> 00:29:31: that that clause requires,
00:29:31 --> 00:29:34: so those are the three basic steps of how to
00:29:34 --> 00:29:39: analyze whether a force measure event excuses
performance under your
00:29:40 --> 00:29:40: contract.
00:29:40 --> 00:29:43: I would also note that we can go to the
00:29:43 --> 00:29:44: next slide.
00:29:44 --> 00:29:48: That forced measure is really one of whom is only
00:29:48 --> 00:29:52: one of a handful of doctrines that might be applicable
00:29:52 --> 00:29:54: here and that were.
00:29:54 --> 00:29:58: Hearing a lot about it and people are are debating
00:29:58 --> 00:30:01: pretty regularly here in the in the Covid area era.
00:30:01 --> 00:30:05: Other doctrines that you might want to think about whether
00:30:05 --> 00:30:08: they apply our frustration of purpose,
00:30:08 --> 00:30:12: the doctrine of impossibility or impracticability,
00:30:12 --> 00:30:15: and then Nicole mentioned a couple of others that are
00:30:15 --> 00:30:17: particularly interesting,
00:30:17 --> 00:30:22: including including the idea of condemnation and takings.
00:30:22 --> 00:30:26: Whether government action, either directly or indirectly,
00:30:26 --> 00:30:29: might rise to the level of taking,
00:30:29 --> 00:30:32: I'll talk for just a minute about frustration of purpose.
00:30:32 --> 00:30:37: Professional purpose is related to the concept of force
measure,
00:30:37 --> 00:30:42: but it's slightly different. Frustration of purpose is the idea
00:30:42 --> 00:30:43: that there was.
00:30:43 --> 00:30:47: Event or there was there was an occurrence of some
00:30:48 --> 00:30:52: kind that everybody assumed either was going to happen or
00:30:52 --> 00:30:54: wasn't going to happen,
00:30:54 --> 00:31:00: and that assumption formed the basis for the contract and
00:31:00 --> 00:31:03: and the nonoccurrence of that event.
00:31:03 --> 00:31:07: Takes away the essential purpose of the contract,
00:31:07 --> 00:31:09: the the sort of all the all the lawyers on
00:31:09 --> 00:31:12: the line I know will roll their eyes when I
00:31:12 --> 00:31:14: use this example,
00:31:14 --> 00:31:17: but kind of the the classic law school example of
00:31:17 --> 00:31:20: this is a case involving someone who who rented a
00:31:20 --> 00:31:24: flat in London to witness the Coronation Pray Parade for
00:31:24 --> 00:31:28: Queen Victoria. And so they paid an exorbitant amount of

00:31:28 --> 00:31:31: money because this this flat had a balcony that looked
00:31:31 --> 00:31:33: right over the parade route.
00:31:33 --> 00:31:36: Well, at the last minute for whatever reason,
00:31:36 --> 00:31:40: the parade route changed and it no longer went down
00:31:40 --> 00:31:42: this street that had this balcony.
00:31:42 --> 00:31:45: With this beautiful view of this now empty St and
00:31:45 --> 00:31:46: so the tenant.
00:31:46 --> 00:31:49: In that case, the lessee sued on the grounds that
00:31:49 --> 00:31:51: that the purpose of the contract,
00:31:51 --> 00:31:55: the viewing of the Coronation parade had been frustrated
and
00:31:55 --> 00:31:58: the court found in its favor and said,
00:31:58 --> 00:32:01: yeah, the entire assumption of this contract,
00:32:01 --> 00:32:04: and the reason you were willing to pay an exorbitant
00:32:04 --> 00:32:05: amount of money.
00:32:05 --> 00:32:08: Like to use this this balcony for a couple of
00:32:08 --> 00:32:12: hours was that you would witness this Coronation parade
and
00:32:12 --> 00:32:15: the fact that the parade changed routes took away the
00:32:15 --> 00:32:19: purpose of the contract that was that was a condition
00:32:19 --> 00:32:23: or an assumption that underlie was underlying the entire
contract
00:32:23 --> 00:32:26: and so that change in circumstances allows you to not
00:32:26 --> 00:32:29: perform allows you to terminate the contract.
00:32:29 --> 00:32:33: So we're certainly seeing folks making those types of
arguments
00:32:33 --> 00:32:33: here.
00:32:33 --> 00:32:36: Those are obviously also pretty factual,
00:32:36 --> 00:32:39: or fax. Civic arguments because you have to point to
00:32:39 --> 00:32:40: something very,
00:32:40 --> 00:32:44: very specific. That wasn't assumption in the contract in which
00:32:44 --> 00:32:46: the contract was based,
00:32:46 --> 00:32:49: so I would characterize these other doctrines.
00:32:49 --> 00:32:52: That sort of backup arguments in the event that you
00:32:52 --> 00:32:55: can't get there with the plain language of of a
00:32:55 --> 00:32:56: force majeure clause.
00:32:56 --> 00:32:58: So with that I will.
00:32:58 --> 00:33:00: I will pause it there and hand it over to
00:33:00 --> 00:33:03: Rick Thomas to talk a little bit about what he's
00:33:03 --> 00:33:07: seeing out in the commercial leasing and landlord tenant.
00:33:07 --> 00:33:10: World. Wreck
00:33:10 --> 00:33:13: thanks Jonathan.
00:33:13 --> 00:33:15: Everyone thanks for joining us today.

00:33:15 --> 00:33:19: Looking forward to sharing our beverage with you all virtually
00:33:19 --> 00:33:22: hopefully later after this and hope everyone is doing well.
00:33:22 --> 00:33:25: But I want to talk about landlord tenant issues that
00:33:25 --> 00:33:29: are being presented to a lot of landlords and tenants
00:33:29 --> 00:33:30: as a result of COVID-19.
00:33:30 --> 00:33:33: And I guess right now the big question is,
00:33:33 --> 00:33:35: can tenants pay their rent?
00:33:35 --> 00:33:40: And this week is pretty significant because it's the first
00:33:40 --> 00:33:43: week that a lot of rent becomes due amidst the
00:33:43 --> 00:33:46: pandemic that we're all experiencing.
00:33:46 --> 00:33:49: And what I've been speaking to clients about is what
00:33:49 --> 00:33:50: concessions can be made.
00:33:50 --> 00:33:52: What should we be doing for our tenants?
00:33:52 --> 00:33:54: And it all comes down to this question of whether
00:33:55 --> 00:33:57: and when can these tenants pay their rent.
00:33:57 --> 00:34:00: And you know, kind of flippantly I've I've I've dubbed
00:34:00 --> 00:34:03: the issue as as the waterfall of illiquidity,
00:34:03 --> 00:34:07: because the current pandemic presents a situation where
there's there's
00:34:08 --> 00:34:10: no one out in the marketplace spending money,
00:34:10 --> 00:34:13: and there's there's a
00:34:13 --> 00:34:18: Of employment where people are earning an receiving
paychecks in
00:34:18 --> 00:34:21: the ordinary course of business.
00:34:21 --> 00:34:24: And So what you see is this list here kind
00:34:24 --> 00:34:28: of falls in the order of who's feeling the pain
00:34:28 --> 00:34:31: the most right now on the residential side.
00:34:31 --> 00:34:36: Clearly those that are are not getting paychecks in our
00:34:36 --> 00:34:41: leasing apartments and potentially have have no savings are
going
00:34:41 --> 00:34:43: to be unable to pay their rent.
00:34:43 --> 00:34:46: As it comes due in the next several months while
00:34:46 --> 00:34:50: we're quarantined and folks have been laid off and
furloughed,
00:34:50 --> 00:34:53: so clearly those tenants are suffering,
00:34:53 --> 00:34:57: retail is very similar, especially retailers and restaurants that
operate
00:34:57 --> 00:35:01: on thin cash margins and don't have adequate reserves
stocked
00:35:01 --> 00:35:04: up to make rent payments without ongoing operations.
00:35:04 --> 00:35:08: So clearly retail is suffering significantly right now,
00:35:08 --> 00:35:10: and a lot of my time has been sent has
00:35:10 --> 00:35:14: been spent the past two weeks dealing with responses to

00:35:14 --> 00:35:14: retailers.

00:35:14 --> 00:35:16: Um, on behalf of our landlord,

00:35:16 --> 00:35:20: clients that own portfolios of shopping centers across the country.

00:35:20 --> 00:35:23: Below that, you're going to have industrial in office who

00:35:23 --> 00:35:27: will also soon start becoming illiquid and having the ability

00:35:27 --> 00:35:28: to pay their rent.

00:35:28 --> 00:35:31: But my assumption is that that's going to be in

00:35:31 --> 00:35:32: months to come,

00:35:32 --> 00:35:37: and not as immediately impacted as retail and residential happen.

00:35:37 --> 00:35:39: So that kind of leads us to our next slide.

00:35:39 --> 00:35:41: An always first get there.

00:35:41 --> 00:35:44: So assuming that the tenants are unable to pay rent,

00:35:44 --> 00:35:46: what is the landlords do?

00:35:46 --> 00:35:48: What are landlords options? And again,

00:35:48 --> 00:35:52: kind of flipping comment. There's a do nothing approach which

00:35:52 --> 00:35:55: I don't think is conducive for anyone you could evict,

00:35:55 --> 00:35:58: assuming that they failed to pay rent and don't establish

00:35:58 --> 00:36:00: a defense to the payment of rent,

00:36:00 --> 00:36:04: either through force measure or some impracticability of defense,

00:36:04 --> 00:36:08: which I think is a little likelihood.

00:36:08 --> 00:36:11: And then the third option,

00:36:11 --> 00:36:15: which is where I'm seeing most of the.

00:36:15 --> 00:36:17: The landlords.

00:36:17 --> 00:36:20: Tent ords is make a deal and the question becomes

00:36:20 --> 00:36:22: what does that deal look like?

00:36:22 --> 00:36:25: But that being said, I want to note that I've

00:36:25 --> 00:36:29: seen some landlord clients see this as an opportunity.

00:36:29 --> 00:36:33: Whether it should be taken as an opportunity you know

00:36:33 --> 00:36:36: is a question for every landlord,

00:36:36 --> 00:36:39: but if you have a tenant at a shopping center

00:36:39 --> 00:36:41: that is paying below market rents,

00:36:41 --> 00:36:45: or that you could re tenant with a better user.

00:36:45 --> 00:36:49: So you want to replace an OfficeMax with a.

00:36:49 --> 00:36:52: You know, national or regional grocer and they fail to

00:36:52 --> 00:36:52: pay rent.

00:36:52 --> 00:36:55: Is that something that you want to take advantage of?

00:36:55 --> 00:36:58: A lot of landlords are grappling with that question,

00:36:58 --> 00:37:00: whether they will be able to is a is a

00:37:00 --> 00:37:01: good question,

00:37:01 --> 00:37:03: but you know, just because tenants are going to pay
00:37:03 --> 00:37:06: rent doesn't mean that there aren't opportunities out there.
00:37:06 --> 00:37:10: For aggressive landlords that want to take advantage of it.
00:37:10 --> 00:37:12: And I saw a question pop up.
00:37:12 --> 00:37:16: You know, is industrial in better shape than office and
00:37:16 --> 00:37:17: retail?
00:37:17 --> 00:37:20: This is anecdotal, but I think industrial isn't is in
00:37:20 --> 00:37:21: better shape right now,
00:37:21 --> 00:37:25: especially if you're leasing space too.
00:37:25 --> 00:37:29: You know warehouses, warehouses that are supplying goods
to Amazon
00:37:29 --> 00:37:32: and similar operators in the industrial space.
00:37:32 --> 00:37:35: I think you also have users that are supporting construction
00:37:35 --> 00:37:37: efforts that are ongoing.
00:37:37 --> 00:37:40: That being said, you might have some industrial users that
00:37:40 --> 00:37:43: are supplying some of the retailers that are struggling right
00:37:44 --> 00:37:44: now,
00:37:44 --> 00:37:46: so orders may stop, so I haven't seen as much
00:37:46 --> 00:37:49: activity on the office or industrial site as I have
00:37:49 --> 00:37:51: seen in the retail side,
00:37:51 --> 00:37:54: but I think within the next 30 days will be
00:37:54 --> 00:37:56: able to answer that question.
00:37:56 --> 00:38:00: More clearly, so assuming that landlords want to pursue
making
00:38:00 --> 00:38:04: a deal with their tenants to ensure that their tenants
00:38:04 --> 00:38:06: make it through this.
00:38:06 --> 00:38:09: This downturn and quarantine period.
00:38:09 --> 00:38:11: What does that deal look like?
00:38:11 --> 00:38:15: So the next slide kind of details the key issues
00:38:15 --> 00:38:17: for landlords to think about.
00:38:17 --> 00:38:19: So.
00:38:19 --> 00:38:22: Water issues for dealmakers and rafters.
00:38:22 --> 00:38:24: When making a deal with tenants right now,
00:38:24 --> 00:38:27: you know the things to think about.
00:38:27 --> 00:38:30: First and foremost is how you're going to deal with
00:38:30 --> 00:38:33: the rent payments that are coming due.
00:38:33 --> 00:38:34: And so ways to structure it.
00:38:34 --> 00:38:38: And it's key to understand the difference between
forbearance and
00:38:38 --> 00:38:39: forgiveness.
00:38:39 --> 00:38:43: So forbearance is a concept where the landlord essentially
agrees
00:38:43 --> 00:38:47: to forebear from exercising their rights and remedies with

respect

00:38:47 --> 00:38:50: to the failure to pay rent for a certain time

00:38:50 --> 00:38:53: period. And this is the most common structure that I'm

00:38:53 --> 00:38:54: seeing right now,

00:38:54 --> 00:38:58: as opposed to forgiveness where you just tell the tenant

00:38:58 --> 00:39:01: that they don't need to pay the rent for that.

00:39:01 --> 00:39:05: And forbearance can come in a few different forms.

00:39:05 --> 00:39:08: So what I've been seeing in the market with a

00:39:08 --> 00:39:12: lot of retail landlords is a forbearance period of between

00:39:12 --> 00:39:13: 60 and 120 days.

00:39:13 --> 00:39:17: So beginning in April and last thing somewhere from two

00:39:17 --> 00:39:18: to four months,

00:39:18 --> 00:39:22: they're telling tenants we will not evict or exercise any

00:39:22 --> 00:39:24: remedies under the lease.

00:39:24 --> 00:39:27: If you fail to pay either base rent,

00:39:27 --> 00:39:31: meaning the rental rate that is the consideration for the

00:39:31 --> 00:39:32: space and sometimes also.

00:39:32 --> 00:39:36: The triple net operating expenses that are passed through to

00:39:36 --> 00:39:39: tenants for the next two to four months,

00:39:39 --> 00:39:41: provided that the landlord had,

00:39:41 --> 00:39:45: in most circumstances has been calling for those four for

00:39:45 --> 00:39:48: the for the rent that would have been paid during

00:39:48 --> 00:39:52: that period to be repaid in 12 equal monthly installments

00:39:52 --> 00:39:56: in 2021. So the thought process behind this structure is

00:39:56 --> 00:39:59: that you'll allow them to not pay rent for the

00:39:59 --> 00:40:01: next two to four months,

00:40:01 --> 00:40:04: and in return they're going to pay it back to

00:40:04 --> 00:40:04: you.

00:40:04 --> 00:40:06: In over the 2021 calendar year,

00:40:06 --> 00:40:10: this gives them the immediate relief that they need,

00:40:10 --> 00:40:14: and hopefully enough buffer before the end of 2020 to

00:40:14 --> 00:40:17: get back to full operation so that they can make

00:40:17 --> 00:40:20: increased rent payments at in 2021.

00:40:20 --> 00:40:24: So essentially it's similar to an interest free loan that

00:40:24 --> 00:40:28: the lender that the landlord is granting to their tenants

00:40:28 --> 00:40:30: to get them through this tough.

00:40:30 --> 00:40:34: Another structure, and I've seen this in industrial is where

00:40:34 --> 00:40:35: you just.

00:40:35 --> 00:40:39: Abate rent you tell the tenant that we're not going

00:40:39 --> 00:40:42: to charge rent it's zero rent for the next two

00:40:42 --> 00:40:43: to four months,

00:40:43 --> 00:40:46: but in exchange we want you to extend the lease

00:40:47 --> 00:40:48: term by the same.

00:40:48 --> 00:40:49: At the end of the term,

00:40:49 --> 00:40:52: or for a longer period at the end of the

00:40:52 --> 00:40:53: term,

00:40:53 --> 00:40:56: and the value to the landlord in that situation is

00:40:56 --> 00:41:00: that hopefully they can sell the asset later on with

00:41:00 --> 00:41:04: better underwriting on NLI after we get out of the

00:41:04 --> 00:41:08: pandemic. So shifting the rent payments and from the current

00:41:08 --> 00:41:13: pandemic environment to back end payments at the end of

00:41:13 --> 00:41:14: the lease term.

00:41:14 --> 00:41:18: So things to think about when entering entering into one

00:41:18 --> 00:41:20: of these agreements.

00:41:20 --> 00:41:25: One concept that we're adding to all of our agreements

00:41:25 --> 00:41:27: is that these.

00:41:27 --> 00:41:31: He's this forbearance structure is conditioned upon the

00:41:32 --> 00:41:33: tenant to

00:41:33 --> 00:41:37: the extent they qualify,

00:41:37 --> 00:41:41: applying for aid and relief under the CARES Act and

00:41:41 --> 00:41:43: specifically the program that we're pointing to is the

00:41:43 --> 00:41:46: Paycheck

00:41:46 --> 00:41:49: Protection program.

00:41:49 --> 00:41:53: I'm sure you've seen news articles about this program,

00:41:53 --> 00:41:57: oftentimes referred to as PPP or Triple P,

00:41:57 --> 00:42:01: and it allows small businesses to apply for low interest

00:42:01 --> 00:42:03: loan that can be forgiven and which is federally insured,

00:42:03 --> 00:42:06: provided that the. The small business owner retains their

00:42:06 --> 00:42:10: employees

00:42:10 --> 00:42:11: and continues to pay them.

00:42:11 --> 00:42:14: After this pandemic subsides, and so that that provision of

00:42:14 --> 00:42:15: the CARES Act specifically states that proceeds from that

00:42:15 --> 00:42:17: loan

00:42:17 --> 00:42:18: can be used to pay rent.

00:42:18 --> 00:42:20: That being said, what I've been reading is is that

00:42:20 --> 00:42:24: at least 75%

00:42:24 --> 00:42:27: of it is going to have to go to support

00:42:27 --> 00:42:28: your payroll,

00:42:28 --> 00:42:31: but that leaves 25% that can go to pay rent.

00:42:31 --> 00:42:35: So what we're putting in our agreements is provision that

00:42:35 --> 00:42:38: one requires them to apply by a certain deadline because

00:42:38 --> 00:42:41: there are limited funds.

00:42:41 --> 00:42:44: So you want your tenants to be applying.

00:42:44 --> 00:42:47: Early. And we're providing them with guidance where to look.

00:42:47 --> 00:42:50: There are resources available from the Treasury Department

as well

00:42:38 --> 00:42:41: as from the Small Business Association.

00:42:41 --> 00:42:44: There's a website that provides with what we've dubbed an

00:42:44 --> 00:42:47: idiot proof guide to applying for these types of loans.

00:42:47 --> 00:42:49: And so we want to make sure that they are

00:42:49 --> 00:42:52: applying for them and to the extent that they are

00:42:52 --> 00:42:55: permitted under the program to use the proceeds to for

00:42:55 --> 00:42:58: rent that they immediately pay those over to the landlord.

00:42:58 --> 00:43:01: I think it notes Bear note stating that we also

00:43:01 --> 00:43:04: need to analyze what types of tenants are offering these

00:43:04 --> 00:43:05: concessions to.

00:43:05 --> 00:43:08: Most of our clients are are allowing for this sort

00:43:08 --> 00:43:11: of forbearance structure for the mom and pop retailers.

00:43:11 --> 00:43:15: The small online spaces that are operated by small

00:43:15 --> 00:43:18: franchisees

00:43:18 --> 00:43:22: or independent operators while asking For more information

00:43:22 --> 00:43:26: from the

00:43:26 --> 00:43:27: national retailers that may have better capital reserves or the

00:43:27 --> 00:43:31: ability to draw on lines of credit to make rent

00:43:31 --> 00:43:35: payments as they come do.

00:43:35 --> 00:43:36: Other items to consider when structuring these forbearance

00:43:36 --> 00:43:39: agreements is

00:43:39 --> 00:43:41: to specifically state the obligations that the tenant needs to

00:43:41 --> 00:43:44: continue to comply with.

00:43:44 --> 00:43:46: So it's not just rent that a tenant needs to

00:43:46 --> 00:43:49: pay during the term of the lease.

00:43:49 --> 00:43:50: I noted this earlier. You need to analyze whether triple

00:43:50 --> 00:43:52: net expenses need to be paid,

00:43:52 --> 00:43:53: and it bears noting that oftentimes some of those triple

00:43:53 --> 00:43:56: net expenses,

00:43:56 --> 00:43:58: such as reserves of such as payments for taxes and

00:43:58 --> 00:44:01: insurance,

00:44:01 --> 00:44:02: oftentimes need to be turned over to a lender to

00:44:02 --> 00:44:06: fund reserves under the loan documents.

00:44:06 --> 00:44:08: So unless a an owner is not required to make

00:44:08 --> 00:44:11: those reserve payments,

00:44:11 --> 00:44:13: or their lender is engaging in a similar forbearance on

00:44:13 --> 00:44:15: behalf of the ownership.

00:44:15 --> 00:44:18: You need to strongly consider whether you should relieve the

00:44:18 --> 00:44:22: tenant of those obligations because you yourself,

00:44:22 --> 00:44:25: as the owner of the shopping center,

00:44:25 --> 00:44:28: might or the similar obligation to your lender.

00:44:28 --> 00:44:31: Also, you want to ensure that they extent they're able

00:44:22 --> 00:44:24: to operate under applicable laws.

00:44:24 --> 00:44:27: You may want to have them continue to operate to

00:44:27 --> 00:44:30: protect against cotenancy concerns with other tenants,

00:44:30 --> 00:44:34: and also that they are continuing to maintain insurance and

00:44:34 --> 00:44:38: maintain the premises from damage that may occur during this.

00:44:38 --> 00:44:41: So structure the agreement such that they are relieved of

00:44:41 --> 00:44:44: their rental obligations for a time period,

00:44:44 --> 00:44:47: but none of the other obligations under the lease with

00:44:48 --> 00:44:48: specific.

00:44:48 --> 00:44:51: Attention paid to operating covenants.

00:44:51 --> 00:44:53: Other concepts that we're putting in.

00:44:53 --> 00:44:56: We put in a standard estoppel statement in all our

00:44:57 --> 00:45:00: agreement stating that the tenant waives all claims for any

00:45:01 --> 00:45:04: breaches or defaults up to the date of the amendment

00:45:04 --> 00:45:08: is executed. We're also putting in a very specific covid

00:45:08 --> 00:45:12: force measure provision that relieves the landlord of certain obligations

00:45:13 --> 00:45:16: such as maintenance of the shopping center if they are

00:45:16 --> 00:45:21: prevented from doing so during this pandemic.

00:45:21 --> 00:45:24: And you know various other protections to benefit landlords that

00:45:24 --> 00:45:26: be happy to talk about during the happy hour.

00:45:26 --> 00:45:29: If people have questions.

00:45:29 --> 00:45:31: So I think with that we can move to the

00:45:31 --> 00:45:32: next slide.

00:45:35 --> 00:45:37: And this is just to note,

00:45:37 --> 00:45:41: for anybody engaging in these types of forbearance arrangements with

00:45:41 --> 00:45:42: their tenants,

00:45:42 --> 00:45:45: you need to understand who may need to approve these

00:45:45 --> 00:45:46: types of arrangements first.

00:45:46 --> 00:45:50: Always check your loan documents to ensure that the lender

00:45:50 --> 00:45:52: doesn't have an approval right.

00:45:52 --> 00:45:55: Most loan documents include a negative covenant on behalf of

00:45:55 --> 00:45:59: the borrower to not engage in certain lease modifications without

00:45:59 --> 00:46:00: the lenders approval.

00:46:00 --> 00:46:03: So check your loan docs and always make sure that

00:46:03 --> 00:46:07: you're getting the appropriate approvals that are needed.

00:46:07 --> 00:46:11: Capital Partners if there's institutional capital or other investors in

00:46:11 --> 00:46:13: the capital stack that have approval rights,
00:46:13 --> 00:46:17: make sure you're getting those approvals before you engage
in
00:46:17 --> 00:46:18: these sorts of agreements.
00:46:18 --> 00:46:21: And finally, for all the property managers out there,
00:46:21 --> 00:46:25: or folks that are sponsors on projects that are receiving
00:46:25 --> 00:46:27: a property management fee.
00:46:27 --> 00:46:31: You need to understand that most property management
fees are
00:46:31 --> 00:46:34: based on gross rents received during a certain time period
00:46:34 --> 00:46:37: and this is going to be labor intensive processing numerous
00:46:37 --> 00:46:42: forbearance agreements with tenants, reviewing financials to
make sure that
00:46:42 --> 00:46:43: they qualify.
00:46:43 --> 00:46:45: And if you're not receiving rent during this.
00:46:45 --> 00:46:48: How are you going to compensate your employees and keep
00:46:48 --> 00:46:50: the lights on during this.
00:46:50 --> 00:46:53: It's really relatively thin margin for property managers and if
00:46:53 --> 00:46:55: you're not receiving rent,
00:46:55 --> 00:46:56: how do you get paid?
00:46:56 --> 00:47:00: And this is something to raise with the ownership group.
00:47:00 --> 00:47:02: And there's various structures you can employ.
00:47:02 --> 00:47:06: I've seen many property managers ask their ownership
groups for
00:47:06 --> 00:47:07: payment.
00:47:07 --> 00:47:10: Now with some sort of reconciliation on the back end
00:47:10 --> 00:47:13: based on what forbearance payments are actually received.
00:47:13 --> 00:47:17: So it would look something like continue to pay the
00:47:17 --> 00:47:20: property management fee based on historical rental
payments,
00:47:20 --> 00:47:24: and then when we receive the forbearance payments in
2021,
00:47:24 --> 00:47:28: our property management fee will not include those
forbearance rent
00:47:28 --> 00:47:31: payments because we've already been compensated.
00:47:31 --> 00:47:33: For that rent, during the forbearance.
00:47:33 --> 00:47:36: Alternatively you could ask for 50%
00:47:36 --> 00:47:40: of the management fee that would have been paid during
00:47:40 --> 00:47:41: the forbearance.
00:47:41 --> 00:47:45: And then do some sort of reconciliation once the forbearance
00:47:45 --> 00:47:46: payments come in.
00:47:46 --> 00:47:50: Because inevitably some of these retailers will not make it
00:47:51 --> 00:47:54: and will not be able to make those forbearance payments

00:47:55 --> 00:47:56: on the back end so.

00:47:56 --> 00:48:00: With that, I think I'll turn it back over.

00:48:00 --> 00:48:03: Great, thanks so much, Rick.

00:48:03 --> 00:48:06: So there was a lot of information on on two

00:48:06 --> 00:48:08: very specific topics in a short amount of time,

00:48:08 --> 00:48:10: and I see here and I think you sort of

00:48:10 --> 00:48:12: answered this record little bit,

00:48:12 --> 00:48:14: but we did have one question that came in,

00:48:14 --> 00:48:16: and I'd encourage others if you have questions to ask.

00:48:16 --> 00:48:18: Now is the time to put them in chat box.

00:48:18 --> 00:48:22: We've got the question in negotiating commercial leases during this

00:48:22 --> 00:48:22: time.

00:48:22 --> 00:48:26: What types of specific mitigation requirements would you recommend as

00:48:26 --> 00:48:28: a response to COVID-19 force measure events?

00:48:28 --> 00:48:30: You talked about this a little bit.

00:48:30 --> 00:48:33: I know if you want to go into anymore detail.

00:48:33 --> 00:48:36: Yeah, sure. So the good news is that there is

00:48:36 --> 00:48:38: commercial leasing going on.

00:48:38 --> 00:48:41: I have received five or six term sheets in the

00:48:41 --> 00:48:42: last two weeks.

00:48:42 --> 00:48:46: For new leases, and it depends on what side of

00:48:46 --> 00:48:48: the fence you sit on.

00:48:48 --> 00:48:52: If you are building out new space for a tenant.

00:48:52 --> 00:48:55: Then you want a very robust force measure.

00:48:55 --> 00:49:00: Provision that specifically includes COVID-19 force majeure events clearly on

00:49:00 --> 00:49:03: the front end you have the obligation to deliver the

00:49:03 --> 00:49:05: space within a certain time period.

00:49:05 --> 00:49:09: At least you will for sophisticated national retailers,

00:49:09 --> 00:49:11: and so you want to make sure that if there

00:49:11 --> 00:49:15: are any penalties or termination rights afforded to a tenant

00:49:15 --> 00:49:18: if you fail to deliver by a certain time period,

00:49:18 --> 00:49:22: then you need to include force measure language for the

00:49:22 --> 00:49:23: benefit of the landlord.

00:49:23 --> 00:49:27: That applies in office industrial retail across the board,

00:49:27 --> 00:49:31: but again, you have to analyze what obligations the landlord

00:49:31 --> 00:49:34: has as compared to the obligations that the tenant has

00:49:35 --> 00:49:38: in representing a landlord on an as is deal where

00:49:38 --> 00:49:41: you're delivering space without any build out,

00:49:41 --> 00:49:44: it becomes less important and you may want to exclude

00:49:44 --> 00:49:49: specific COVID-19 force majeure events from the Force

measure language

00:49:49 --> 00:49:53: and specifically call out COVID-19 as being excluded because you're

00:49:53 --> 00:49:56: entering. Into the lease in a time period in which

00:49:56 --> 00:49:59: everyone is aware of the delays that are being caused

00:49:59 --> 00:50:02: by COVID-19 and you should enter into the transaction with

00:50:02 --> 00:50:05: your eyes wide open. So I hope that answers the

00:50:05 --> 00:50:06: question,

00:50:06 --> 00:50:08: but happy to answer any follow UPS based on that.

00:50:08 --> 00:50:10: Yeah and Rick this is Jonathan.

00:50:10 --> 00:50:13: I think that's a great answer and I would.

00:50:13 --> 00:50:15: I would also just add to that and thinking about

00:50:15 --> 00:50:17: all these clauses,

00:50:17 --> 00:50:20: force, measure and otherwise. First major in particular is just

00:50:20 --> 00:50:24: an allocation of risk and you're deciding how you're allocating

00:50:24 --> 00:50:25: your particular.

00:50:25 --> 00:50:29: Risk as between landlord and tenant or buyer and seller

00:50:29 --> 00:50:30: or whatever.

00:50:30 --> 00:50:34: The nature of the transaction is and and here you

00:50:34 --> 00:50:38: can and should be allocating the risk of covid related

00:50:38 --> 00:50:41: delays between between the parties.

00:50:44 --> 00:50:47: Great great point Jonathan. I mean,

00:50:47 --> 00:50:49: I just check on to everything that Rick just presented

00:50:49 --> 00:50:52: and say that a number of the things that he

00:50:52 --> 00:50:54: suggested on sort of how you're negotiating and and the

00:50:54 --> 00:50:59: forbearance versus forgiveness is the same Senate kind of conversations

00:50:59 --> 00:51:02: that we're seeing occur with real estate lenders.

00:51:02 --> 00:51:05: You're seeing certainly the real estate.

00:51:05 --> 00:51:09: Loans related to hospitality be the first ones that need

00:51:09 --> 00:51:11: some conversation and need workouts,

00:51:11 --> 00:51:16: because certainly those properties went to extremely low occupancy faster

00:51:16 --> 00:51:19: than anybody else and work the most quickly impacted.

00:51:19 --> 00:51:23: But I think you're going to see some other workouts

00:51:23 --> 00:51:25: and loans as you go forward,

00:51:25 --> 00:51:27: and that similar sort of again.

00:51:27 --> 00:51:32: Forbearance versus forgiveness is same kind of conversation that you're

00:51:32 --> 00:51:35: seeing occur between a lender and borrower right now,

00:51:35 --> 00:51:39: so. Um Sarah? I don't know.

00:51:39 --> 00:51:41: I don't see any other questions here.

00:51:41 --> 00:51:43: I don't know if the group has any other questions.

00:51:46 --> 00:51:49: Sure, yes, thank you, and we're almost at a time,
00:51:49 --> 00:51:52: so we are well. Thank you so much Nicole.
00:51:52 --> 00:51:56: And thanks to the entire Brownstein team for lending their
00:51:56 --> 00:51:58: expertise on today's session.
00:51:58 --> 00:52:00: We hope it was valuable for all of you.
00:52:00 --> 00:52:02: As we mentioned at the beginning,
00:52:02 --> 00:52:05: we recorded today's session and we will share a copy
00:52:06 --> 00:52:08: of the recording in PowerPoint to you,
00:52:08 --> 00:52:12: like Colorado's website, on our resources page.
00:52:12 --> 00:52:16: Our staff, while working virtually continues to be available for
00:52:16 --> 00:52:20: your membership and program related questions and as an
ongoing
00:52:20 --> 00:52:22: resource to you during this time.
00:52:22 --> 00:52:24: So who's ready for happy hour?
00:52:24 --> 00:52:25: I think I am Michael.
00:52:25 --> 00:52:27: If you've got that, we're ready.
00:52:27 --> 00:52:29: I think we're ready to go to happy hour and
00:52:29 --> 00:52:32: we invite everyone to please remain on this webinar.
00:52:32 --> 00:52:34: Grab your favorite beverage from your home.
00:52:34 --> 00:52:38: Refrigerators and my colleague Elise Martinez will be getting
placing
00:52:38 --> 00:52:41: you into your virtual happy hour groups.
00:52:41 --> 00:52:45: Each group includes about 20 participants for continued
discussion,
00:52:45 --> 00:52:49: and it's facilitated by Ulic staff and volunteer young leader
00:52:49 --> 00:52:49: members,
00:52:49 --> 00:52:53: so we hope everyone enjoys your group conversations and
Elise.
00:52:53 --> 00:52:56: I think we're ready to start this process please.
00:52:56 --> 00:52:57: Thank you.
00:52:57 --> 00:52:59: OK, great thank you Sir.

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