

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
00:19:49 --> 00:19:52: seizure
00:19:52 --> 00:19:55: of real property for use by the government,
00:19:55 --> 00:20:02: as you know, sort of. Additional shelters for shelter in place or for quarantine
00:20:02 --> 00:20:06: victims,
00:20:06 --> 00:20:08: or for hospitalization, or. Frankly,
00:20:08 --> 00:20:11: to better enforce the stay at home.
00:20:11 --> 00:20:12: So these are things that are we are grappling with
00:20:12 --> 00:20:15: daily and again,
00:20:15 --> 00:20:18: they vary by jurisdiction. They vary by state,
00:20:18 --> 00:20:21: but it is amazing the amount of stuff that comes
00:20:21 --> 00:20:23: up that deals with real property.
00:20:23 --> 00:20:26: We lawyers or kind of geeking out on this a
00:20:26 --> 00:20:30: little bit because it is like a law school exam
00:20:30 --> 00:20:33: question that you know you post somebody with the
00:20:34 --> 00:20:35: pandemic
00:20:35 --> 00:20:39: name every possible legal issue you can get them and
00:20:39 --> 00:20:44: you start to think of him.
00:20:44 --> 00:20:48: And then there's there's 10 more behind it so.
00:20:48 --> 00:20:50: With that I am going to introduce my colleague.
00:20:50 --> 00:20:53: Jonathan Pray Jonathan is shareholder in our litigation
00:20:53 --> 00:20:57: group.
00:20:57 --> 00:20:58: He also is general counsel to our firm,
00:20:58 --> 00:21:01: so he's got a whole different issues listed.
00:21:01 --> 00:21:04: He's dealing with their by Jonathan's background has been in
00:21:04 --> 00:21:08: construction for a long time.
00:21:08 --> 00:21:11: He is who I turned to for all my questions
there and he said we quickly grabbed on the phone
to start talking about force measure because that is definitely
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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