>>: Good morning, everybody. I'm here, I'm Jennifer Ioli-Connelly, and I'm here with Laura Kaplan and we're both partners in the real estate department at Sherin and Lodgen. And we're here today to talk about drafting and negotiating a small commercial lease. And both of us do a lot of leasing work on behalf of landlords and tenants, obviously not in the same transaction, but we have some well-rounded perspective to share with you as you start looking into representing clients that are entering into smaller commercial leases, which can mean a couple of different things to different people, but generally something that is a small business or a smaller space in a shopping center or office. And generally just going through the fundamentals of these particular types of leases, they do have a lot in common with other leases as well. So it's important to remember that all leases will have some interplay between the different provisions, it's an active document, and you want to make sure that you're not conflicting with provisions that are found elsewhere. But in - to go through, initially we thought we would identify a list of topics that are most frequently negotiated. And obviously, depending on your own client's business and their goals, it makes sense to go through everything with your client. But for the most part, these provisions that we'll be discussing today are the ones that are typically focused on in negotiations. And when you're representing a smaller client, especially on the tenant side, you might want to be a little bit more strategic about what you push back on and what you try to accomplish, since it's unlikely that you'll get a lot of different changes accepted by the landlord. So these are the most prevalent business issues that we generally see and obviously, don't ignore the boilerplate and we're not going to touch on that today. But it's important to remember that you can negotiate that as well, if you see fit. So getting going, our first topic. Today will be permitted use. And so, when you're representing a landlord, landlords generally favor a strictly limited, permitted use, they want to be mindful of the different types of tenants. If it's a shopping center, have an overall plan for the different businesses that complement each other in their retail center or other complex. This tenant mix concern is seen less in an office context and it's not customer driven. But generally, the landlord will want to limit the tenant in what use it's allowed to do in the premises. And if you're representing the tenant. Tenants will generally favor a more broadly defined permitted use. They want the flexibility to pivot and maybe change a strategy if the original business idea does not work as well as they expected. They might want to keep their lease more marketable in terms of potentially assigning it to someone else or maybe subletting it. They want to have the flexibility to be a little bit more reactive to the market. And that whole broad definition sometimes makes landlords nervous. So there's usually a lot of negotiation in terms of the permitted use. And oftentimes there are other use restrictions that landlords will put into a retail lease, like the general noxious uses that are not allowed and different, undesirable businesses that landlords generally don't want to see in their shopping center, like adult film stores or other, you know, unsavory sort of establishments in the landlord's use. So that's something that you might see in the use provision as well. And then also, an issue in retail leases could be an exclusive use. So exclusive uses are more important for the retail setting. If you're representing a small tenant, it is less likely to find a landlord willing to grant your client the exclusive right to operate its type of business in the shopping center. But you'll want to be mindful of the exclusives and other restrictions that the landlord might have given other tenants. And you're going to want to basically ask the landlord to give you a list of all of those exclusives, and even better, a list of the language that comprises the exclusives, so you can interpret it yourself. And if you can try to get a representation from the landlord that these are all of the exclusives that, you know, that are in effect at this time and, so you can understand the realm of all the different restrictions that your client might be under in the future, if they change user, if they want to do something different.

Generally, you'll also want to make sure there are no third-party exclusive documents, like reciprocal easement agreement or covenants, conditions and restrictions that affect the property. So you might want to take a look at the title on the tenant side just to see if there's anything out there that affects the shopping centre. If it's part of a larger development, it might have some sort of restrictions or other things that you want to be mindful of. So on that note, I've got some sample language here, examples of use provisions. This is going back to the primitive use concept So on the landlord-friendly side, tenant agrees to use and occupy the premises solely as a retail establishment for the sale of whatever the case may be. And then a lot of times landlords will wrap in the trade name into the use provision. So if you - say your tenant has a trade name that's unique, they don't want you to operate the business under any other name. So that's something the landlord will often try to wrap into the use provision and landlord needs to determine sole discretion, all retail uses and operators within the shopping center and agrees that no change in use of the premises shall be permitted under any circumstances. Tenant further agrees that it shall not change its trade name without landlord's prior written consent, which shall not be unreasonably withheld. A lot of times, tenants will insert this last piece. Sometimes it's "shall not be unreasonably withheld, conditioned or delayed", some sort of standard, or else the landlord has the sole discretion to do whatever it wants. So as the tenant, you might want to push back on this, this might be all you can get depending on the leverage and the parties in the deal. But it's important to try to make that a little bit more flexible, since a lot of times, tenants want to change their trade name. If it's a small chain, sometimes you see the tenant wanting to be able to change the trade name to whatever the majority of its other stores is called. Sometimes you get into the negotiation on that front too. So that's basically the landlord-friendly provision, that often times you'll see in their starting form. And then the second example is more of like a negotiated example where each party had contributed something to the clause. And here the, you know, this has to do with, I think this provision came from a restaurant lease. So there's a menu that's attached and they basically have added "tenent may make changes to the menu without landlord's consent if such changes don't deviate from the primary use or violate any exclusive granted by the landlord." So that gives you a little bit more flexibility. It's important to put in all the different types of uses that your client might want to do as part of its business, like if you're representing a tenant that's like, a martial arts studio. If they're giving karate lessons or jujitsu lessons or something like that, you'll want to include other ancillary types of incidental uses, like perhaps hosting children's birthday parties or doing something like that, that's a little bit off the primary use, but included within it as something sensible. So just think about all the things your client wants to accomplish, think about whether the trade name is important. If it's a sole proprietor or some sort of small business that doesn't have a trade name, then, you know, it's probably just operating under a DBA, so that's not a big deal. But you want to make sure that your client will have the flexibility to accomplish its business goals and try to negotiate the language as best you can. And this last example is not really from a small lease, but it's just to show you what a tenant-friendly provision would look like. And here it can be used for any lawful purpose. Note that it's not just a retail purpose or anything like that, it's any lawful purpose, so that is super broad. And, you know, that - and then this last sentence here is very tenant-friendly, that these provisions in the section are the sole restrictions applicable to the use of the demised premises. So there's literally nothing else that would restrict you from doing anything lawful. So that's definitely something that would be challenging to obtain in a smaller lease, but I'm just throwing it out there as an example of what the opposite side would be the most tenant-friendly side. So those are some examples of the use provisions. And I think at this point we will move on to delivery conditions

and alterations, so. Another hotly negotiated item, and this is often part of the LOI process, which is important if you're counsel to either a landlord or a tenant, to try to get involved in that process really early on. So you don't just get an LOI that's already been signed and then you can't really negotiate as freely as you otherwise might have been able to. So it's important to get that LOI in the beginning, just as a general practice tip. And delivery condition is something that relates to how is the property, how is our - how are the lease premises going to be delivered to the tenant? Is the landlord doing any work? Is the landlord going to just give it to the tenant and the tenant can do some work? Is the landlord going to be funding part of that work as part of a tenant-improvement allowance? Are there other target delivery dates that need to be considered, like how long is the work going to take? What's the rent structure like if you have to wait so long to get delivery? When does rent commence? Like all these things kind of are wrapped up into the delivery condition piece. And if tenant's doing construction, there's often a lot of different parameters that landlords like to control that process like, they want to see all the drawings in advance and approve them. They want to sign off on tenants, contractors, sometimes They have a lot of interest in making sure that the construction being done on the landlord's property is done in a lawful manner and with all the requisite permits and all the different considerations that you'd have to go through for a construction. And a lot of times you want, you know, lien waivers or other sorts of security to make sure that the tenant's contractors don't lien the landlord's property. So there's a lot that goes into this and it's important to remember what does the business deal provide? Is the tenant going to be doing any work? And if the landlord's doing everything upfront, then this provision isn't super robust. But if you're getting into the weeds of construction and plans and all sorts of upfit, then you're going to have to focus more strongly on this provision here. So, sometimes there's provisions about union labor that needs to be used, so that can add some cost to the tenant side if the tenant is required to use a union contractor. And sometimes the construction allowance provision can get a little bit out of, you know, go on for pages about when is the allowance disbursed, how much of it has to go towards hard costs or soft costs? What sort of certification do you need to submit to the landlord to say, hey, we've done the work, it's time to receive some of our allowance? And, you know, there's a lot of detail in this provision. So if you have a delivery condition that includes a construction allowance or tenant improvement allowance, it's important to understand the timing and the mechanism of all of the moving pieces, because construction can be, especially these days with the supply chain issues and delays and things like that, that can be very complicated. So those are important provisions to focus on, especially for your clients that are doing substantial work. And oftentimes there's other provisions that kind of relate to delivery condition in that, if you get this space, the tenant might want to do some improvements to it, especially after they've operated maybe for a little bit, they see how their business is going, and then they decide a certain revision to the space might help them be more efficient. Or they might want to pivot a little bit in terms of the market, say they have a retail establishment and they might want to put a little room aside for online pickup orders, or change some sort of internal structure that might, you know, help them with their business. They want to have flexibility on that. So in their alterations realm, it's sort of parallel to how the premises are going to be delivered. But it's important to remember that landlords will want control over what the tenant really does to this space, especially if it affects the building's structure or systems. And the tenants want the flexibility to alter the space without having to go get landlord's approval or go through an overly burdensome process to have the landlord sign-off on every little thing they want to do. I mean, sometimes it can be a balance here. So a couple of things you can do to negotiate the alterations provision. As the tenant, you can say you want to be able

to make non-structural interior alterations without landlord's consent, as long - and sometimes as long as they are less than a certain amount, a certain dollar amount. Sometimes you want to have the ability to make these alterations just freely without having to go through landlord's approval. If landlord does have to approve, you might want to have that approval be not unreasonably withheld or conditioned or delayed. You might want to add some provisions in terms of if you have to have your to - if your client's the tenant and they have to close their business during the alterations, you'd want to make sure that you carve out the alterations from if there's any sort of "keep open" or continuous operation covenant in the lease. So if your client's obligated to run its business every day for the rest of the term, you want to make sure that, if you have permitted alterations that are at issue, then carve out from another section. So the lease, like I said before, is a living document. So if you make some changes here, you want to make sure that you're considering the effect of those changes throughout the document so that you don't inadvertently leave a door closed. So going on to - let's see here, the delivery conditions. I have some sample language here, as well. This is, you know, landlord is not required to make any improvements to the premises unless otherwise stated in the lease. Tenant has inspected the premises and agrees to accept delivery as is without warrant, due representation by landlord. And that's something that landlords will often want. And then as a tenant, you might want to add some sort of language in red here just to give them an outside date, say they have - say they want to deliver it as is, but they're going to make a couple of plumbing repairs or something before they deliver it. This is more to keep them on track so that you get the space when your client needs the space. If it's not done in three months or whatever time period you agree to, then you can have an out, in that case, so. And this is some compromised language here about inspecting the premises after a landlord's work is done. And then you just kind of make a little bit of a negotiation here with respect to tenant taking measurements, you want to make sure that the work is going well. The tenant should have a right to go in and inspect it and see if it's according to plan - and a lot of times there's an indemnity baked into this as well, so that's something to consider. In terms of alterations, sometimes landlord will reserve the right to come in and make alterations to this space, if they need to come in and do something that might help a different tenant next door - there's a pipe that goes through the property that your client's leasing, then the landlord might want the right to come in and do some work on that. And that's an important thing to recognize that it could cause an interruption to your client's business and maybe add some parameters on how often and when and with what notice, the landlord may be able to come in and alter the space. So that's something to consider in terms of alterations as well. And a lot of times the alterations will require some sort of other conditions. If you try to negotiate the alterations and say we want to make interior non-structural alterations that like - freely as as we see fit, the landlord might come back and say, okay, but you know, provided that those changes don't affect the structure or don't affect parking requirements or permits or entitlements for the premises or the shopping center, and that tenant indemnifies landlord from claims related to such work. And if there's any plans that are required in connection with the alterations, the landlord would want to see the tenant's plans. They can come back with all these other things - so it's really a dialogue as you go through these types of provisions. And ultimately you want to make sure that whoever you're representing is able to understand the risks that are involved and go from there. So I think at this point we can move on to the next issue to keep things moving - operating expenses. Common area maintenance - other types of you know, provisions that are highly negotiated. A lot of times in shopping centers, in Triple Net Leases as they're known, landlord will pass these costs along to the tenants, usually by the pro-rata share that each tenant leases - in office

leases it can be a little different with a base year concept. But the concept is ultimately the same in that landlords are responsible generally for maintaining, repairing and operating the common areas of the space. So your client will lease a little building, if it's the tenant, a little part of the building, and then contribute extra costs to maintaining the parking lot or the landscaping or the lighting or the - if it's an indoor mall like the heating and other interior common area costs for the atrium or the lobby or any sort of space that multiple people can use in common with each other as they serve the shopping center. So the landlords will want to pass through these costs to the tenants. And sometimes these costs can be substantial, especially when it comes to what they call uncontrollable common area costs, which are generally utilities and snow removal and other things that are set by third parties, like insurance rates and things like that. So tenants might want to negotiate a cap on what the controllable expenses can increase by each year. Sometimes they will say, all right, well, we won't pay more than 103% of last year's controllable expenses. And also important to remember is the definition of what is actually a common area expense, and tenants might want to push back on any attempts from the landlord to pass through any administrative fees and other expansive cost categories. Sometimes landlords will say everything in connection with, you know, my maintaining the parking lot, restriping the parking lot, repaving, doing lighting changes, landscaping, driveway maintenance, things like that, plus a 15% administrative fee or something like that on top of everything else. So if you see anything like that as the tenant's counsel, it's important to try to figure out where you can kind of trim that back. This is another provision that generally gets negotiated heavily. Another thing to consider when you have these common area operating expenses that are being charged, it's important that tenants might want to audit or inspect the landlord's books and records to confirm the expenses are in line with what actually they incurred. A lot of times these are structured as monthly estimates throughout the year and then there's a true up period at the end of the year. So you can kind of pay X dollars a month, this is what we think it's going to be. Then the year ends, everybody wraps up their books and you go back and look and see. All right. Actually, it was more. So you owe us a little bit more for this year and or if it was last year, you want to make sure you get that savings back as the tenant, if you can. And the audit rights are important to incorporate just because you might want to just make sure that the landlord is not just telling you what it costs. You want to have the right to go see it and see if it sounds a little fishy. You might want to take a look. So it's important to potentially negotiate that in there. One thing that's important in the audit rights is like how far back the documents go. How soon do you have to exercise your right to audit? I mean, landlords won't want to keep things around and you don't want to go back 10 years in the lease and say oh, 10 years ago you overcharged me for common area expenses. So you want to limit that in an appropriate way just to make sure that nobody's you know, if you're going to fight about it, you might as well have the fight sooner than later. I think it benefits both parties to get that out of the way, so it's not lingering throughout the term. Also important to make sure the audit - if there's any sort of discrepancy, if it's more than X %, you might want the right to recover the costs. If you were right to question the expenses and you go through the audit process and they did overstate them, you want to be able to recoup some of those costs and get that back into your wallet - into your client's wallet. But, yes, so the alteration I mean, the common area expenses are important. Sometimes, depending on the deal, they're monthly payments. Sometimes they're annual payments. Sometimes they go into substantial detail about what is included. You want to make sure that you're - you know, what are the common areas is another threshold question. How are they defined? Are you paying for just the immediate parking area? Do any of the other tenants take care of any of these other areas that

look like they're common areas but maybe aren't? Sometimes bigger tenants will take care of their own space. And does that get computed into your share? Like it's important to just kind of get a little bit into the weeds on these just to make sure that you're not, you know, misunderstanding it or other things like that. Another item to be mindful of here is capital expenses or capital improvements made to the shopping center. So a lot of times landlords will want to make what they deem a capital improvement, which is a giant investment, maybe a giant replacement - it's usually determined by accounting principles, and you don't necessarily want to be charged for that whole thing up front. There might be an amortization period, so it's important to remember how - over what term of time is this amortized? Is it just the the lease term? Is it over 30 years? Is it over what? So how do you make sure that you're not paying for it? Say you're leasing the space for five years and the landlord's making a substantial investment - your client doesn't really want to be on the hook for fully contributing towards something that they won't really see the benefit of over its useful life. So that's important to pay attention to whether capital improvements are dealt with in the clause, and if they are, then make sure that their amortization is benefiting your client and yes, so basically that is something that people pay a lot of attention to. In terms of the office side, I don't know if anyone's representing any office tenants that are maybe smaller. You might have the same sort of concepts, but with respect to an increase over a base year. So you might have a number as of your first year and then the tenant will pay increases in taxes and operating expenses over that base year throughout the term. So it's important to understand if that's the structure of your client's lease and that's just another angle on a different type of industry, so. Another thing, too - there's a lot here - another thing to remember is how the tenant's fraction is calculated. So a lot of times if the tenant is leasing space according to rentable square footage, the basis would be the rentable square footage of the tenant's leased premises, over the aggregate, rentable square footage of the building. A lot of landlord forums will say leased space as opposed to leasable space and if you're the last person standing in that kind of clause in a multi-tenant situation, that would leave you with 100% because the lease space is just you. So you want to make sure that it's something that you understand in terms of how the fraction is actually calculated and whether it's fair. And you want to try to push that to be, you know, leasable space as opposed to just lease space. So it's a little word that might slip by you, but it's important to know that you want to pay close attention to this, all these little things that are baked into this clause. So a lot of times these things just kind of overwhelm - they're very robust provisions, but it's important to focus on them and make sure your client isn't getting out of depth with that. So a lot of times another way to limit the definition of operating expenses is to try to insert basic, reasonable in front of the list of expenses or offer a list of exclusions. So, that's something to think about, like what isn't included. If they're going to pay their cousin to manage the property, should that be excluded? Like just, all of the- there's a list of general exclusions that you can proffer and try to get out of the definition. Oftentimes this doesn't work because their leases are the same for every tenant, they're going to tell you that we can't change anything for you because it would affect everybody. But you got to give it a shot, I think, to just try and negotiate this as much as you can. So I think with that, we might be ready to turn it over to Laura to talk about some assignment and subletting, which is another hot button issue, so...

>>: Thanks, Jennifer. This is funny, you know how you think of assignment subletting sometimes as part of the boiler plate, but it's really very critical on both the landlord and the tenant-side. On the landlord-side, you get into a deal with a particular tenant that has a certain type of operation, reputation,

experience, financial condition, and that's the deal you want to have. And potentially, an assignment or sublet situation puts a totally different operator in that tenant's space. So you want, as a landlord, to have a lot of control. You know, on the tenant side, you know this is your potential out if the deal doesn't go according to plan, you don't have to go and ask the landlord to terminate the lease and potentially charge you a huge termination fee. You can pass, you know, responsibility for paying the rent on to an assignee or sub-tenant, though usually you remain primarily liable if those, in those businesses don't meet their obligations under the lease. A standard with the first draft of an assignment provision usually basically says you can only assign this lease with the consent of the landlord in landlord's sole discretion, either written out or, you know, just not having that qualifying phrase that Jennifer was talking about, to not unreasonably withhold condition or delay. So that's the first thing that you want to ask for, the tenant is - that the landlord has to at least be reasonable. And oftentimes negotiations of these provisions are around what is a reasonable reason for a landlord to not consent. And it could be something like, this would change the permitted use. If you're at a shopping center context, the mix of tenants is very important. You know, if you're in an office, if somebody wants to have a lab space component, that's a very different set of risks and responsibilities for the landlord, they might not want to allow that. They often don't want to change to a new tenant that has a really different financial situation from the existing tenant, they'll want to see tenant financials on that point or have a net worth requirement for the new tenant and experience requirement. Sometimes these assignment provisions are not just a total change in the identity of the tenant, but just a change of the control of the existing tenant, whether it's a change in investors or in the form of the entity. Landlords can get involved there, and this is very critical for tenants to define what's a permitted share transfer that can be done without consent, so that you don't have your MNA transaction for your tenant tied up on a landlord consent issue, that you could do a merger into another business. Or even if you know that there's an estate planning transfer that's coming up, that these are things that the tenant in the lease can spell out as something that is allowed with just notice to the landlord and not a landlord opportunity to say no or to just hold up a transaction by not being timely in granting consent. Something that you often see in assignment subletting provisions is that the landlord should be reimbursed for all costs associated with reviewing the request. Something the tenants are very often able to negotiate there is at least a reasonable cap on what those fees might be. There's a range, it's usually somewhere between $1,000 and $5,000 per transaction that you would see as being a reasonable review fee. It is definitely something worth asking for, just for greater certainty on what the tenant's costs are going to be. A couple other points on assignment and subletting I wanted to bring up is very often you see like a profit-sharing provision. So let's say that you enter into a lease that, we'll just say $5 a square foot, but then the market is such that it's now $10 a square foot. If you're a tenant, if you sublet at that higher rent, the landlord wants to capture at least 50% of the difference in the rent. What you want to watch out for as a tenant is that, you know, you've extended certain costs maybe on a broker or negotiating the sublease. You want those netted out before landlord takes their portion of the profit share. In a competitive market, a landlord wants the ability to go direct to a new tenant potentially, or to just recapture the space to reuse. And so they'll say, you asked for an assignment, we landlord can terminate your lease. As a tenant, something that is useful to ask for and often granted - let me just withdraw that request for an assignment or sublease and stay where I am, and then that recapture rate is no longer effective. I think that's all I've got on assignment and subletting.

>>: Okay I'll go to the next one- default.

>>: So default- again, this is another provision where people sometimes, when they're approaching a lease think, well, I'm not going to get very far. Changing the default remedy is because landlords, basically, have very strong default provisions overall. But there are some places along the boundaries as a tenant where you can make some modest modifications that make a real-world difference. So, you know, first, there's usually a default provision that distinguishes between a monetary default, not paying rent, not paying some other amount due under the lease, and a default that involves violating, you know, any other kind of performance responsibility under the lease. And often landlords have, for monetary defaults, no notice of defaults and no grace period. So if you don't pay your rent on time, you could be immediately in default, triggering all these very robust remedies for the landlord. You can usually as a tenant say, give me at least a grace period, give me five, give me seven, give me ten days to make that payment and not be in default. Another thing to ask for, though, is that actual written notice. You can say, you know, I might have as a tenant just an administrative snafu that makes me miss one rent payment, and I don't even realize it's happened. Landlord, can you at least once a year, if that happens, send me a written notice before I'm in default. Give me a chance to follow up with whoever is doing my books and get the matter corrected. So that - on monetary default, those are things that are important to to think about and ask for. A non-monetary, you want to think about, you know, what period of time do I get if I get an, you know- usually a notice of default is required. Do I have 10 days, 15 days? Oftentimes you get 30 days to correct a situation before it's an event of default. So the timing of that is what I think is probably most important. The other is that sometimes leases, at least for the landlord, not always for the tenant, give what's called self-help rights. It's the ability to step in and perform for the other party and have that party reimburse your costs. So you want to look at the timeline there, too, and see how it matches up, because it can be very expensive for a tenant, for a landlord to step in and perform, say, a maintenance obligation that the tenant was supposed to perform. And you also want to think about making sure the language is structured so that if you've started to perform as a tenant, you're starting to make the repairs, you know, and you're proceeding with diligence to complete those repairs, the landlord can't still exercise their self-help rights, come in and interrupt your work and double your costs on that. There's usually an emergency kind of situation carved out on these types of things where, you know, if it is creating, you know, an unsafe situation or a threat to the landlord's property, they can exercise self-help without the notice period. Very hard to negotiate away that right, though, but you can try. In terms of remedies, you know, the - what I would watch out for there is, you know, what you can you get in a contract and your lease, versus what you have available at law and equity. So a lot of times, in terms of remedies for landlords, there's extensive contract remedies, and for the tenant, there's sometimes no landlord default provision at all, meaning you can sue the landlord for breaching their obligations. And if you're successful after the expenditures required to to bring a lawsuit, you might see some damages. But as a small tenant, it's hard, I think still worthwhile to look for contract remedies like, you know, can I offset my rent if the landlord's not performing their obligations for maintenance or interrupted my utilities, something like that. Can I get those self-help rights that we just talked about the landlord having? Can a tenant have them for a landlord not performing their maintenance obligations? On contract remedies for landlords, that usually, you know, if there's an event of default, they could, the landlord can enter and will either say, you know, with or without process of law, it's worse than making them go through the summary

process. There's protections for tenants. If that's an ask worth making, they can terminate the lease but the tenant remains liable for rent and that can look a few ways. It could look like the tenant continues to pay rent, you know, every month as it becomes due. But usually there's a type of acceleration where the tenant is liable for damages equal to all of the rent that would have been due over the course of the rest of the lease. And something to look out for there is, you know, how is this going to be calculated? It really should be, if it's fair, just the present value of that rental stream that they're missing. And what is the discount rate going to be? What's fair based on the market for that? The other item that you sometimes see in first draft leases from landlord, because there's some common law obligation to do this in Massachusetts, but what duty does the landlord have to mitigate those damages? So if landlord is going to get rent over the course of the lease, do they have any obligation to try to relet that space? And what does that look like? Is it enough that they just engage a broker or do they have to be, you know, use more robust, commercially reasonable efforts to have, you know, less of a loss so that the tenant is not ultimately liable for so great a sum? And the other thing that is oftentimes not in the default provisions but is in buried in other kind of boilerplate provisions of the lease, are limitations on the liability of the landlord, and it's hard to get out of either of these things. But, you know, one is usually any individuals, the managers, principals, partners of a landlord are never personally responsible. Wouldn't recommend trying to take that out, but would recommend trying to have tenant have the same advantage that, you know, similarly, the people in control, the tenant entity can't be personally liable. Landlords often limit their liability as well to their interest in the premises or in the building or shopping center that the premises are part of. That is hard to get rid of, but it shouldn't, usually shouldn't, be necessary, if you've already limited the personal liability of the principles.

>>: Okay.

>>: Jennifer, do you think I missed anything important there?

>>: No, I think that was great. It's a nice, comprehensive overview of default.

>>: So this is the last provisional we'll talk about. You know, relocation provisions exist because landlords are thinking about bigger leases than the lease that you are working on. You know, we focused here on the kind of smaller tenants, maybe they want to be able to combine several spaces together to accommodate a big tenant. So they put in a right to relocate and substitute your client's premises with substitution space. The - you can try to just eliminate this altogether, sometimes these provisions are just part of the boilerplate lease form and the landlord doesn't need them and you'll be successful just striking it. But more often, the more productive approach of the tenant is to really define and restrict the landlords rights. So, you know, if it's important to have frontage on a particular street or to be on a particular floor of a building or to have a certain amount of windows, or if there's certain attributes of the space that are important to your client's business right in there, that - if they're relocated, they have to have those few essential things that are important to their operations. Standard landlord provision will provide for landlords pay costs of relocation, but it often doesn't go into that much detail about what those costs would be. It should be, it should include even things like your marketing materials and your letterhead and anything that is a cost that you, tenant, are incurring that you wouldn't in the normal course if you hadn't been asked to move. And last is, you know, I've seen relocation provisions that give two weeks notice as a starting point. For most businesses, that's totally inadequate. I'm not

saying you can ask for two years notice, but is 90 days enough, is 120 days enough? It's good to talk to your tenant about the nature of their business and how hard it is to move. The other thing, too, to look out for is oftentimes landlords calculate rent based on square footage. If they're relocating you to a larger space, you should ask them to agree that the rent doesn't go up. But if they will relocate you to a smaller space, they should actually decrease the rent, based on on square footage. Sometimes a negotiated middle ground is, you know, if the square footage increases by more than X, that is kind of capped. So if you are getting the bigger space, you're paying maybe a portion of that cost, but not all of it. And the other is just to ask your client if there's a relocation provision, you know, what measures particular to their business are required to minimize interruption. You know, maybe if it's a retail business, they want this relocation to happen on a Monday because there's no foot traffic. But if it's an office tenant they maybe require that relocation occur over a weekend.

>>: Makes sense. Yeah, I think also, in terms of alterations, like did your client make like, a substantial alteration or investment in the space that they originally leased? And how would that translate if they were to have to move?

>>: That's a very good point. I would say that that should be included in the characteristics of the substitution space or the reimbursed costs.

>>: Mm-hmm. Exactly, it goes into that point. Nice. Does anyone have questions for us? I think, I don't know, this is prerecorded, but if you ever have a question for us, let us know and we're happy to answer. Anything you might have come up with.