NEW WEBINAR

COVID-19 and EB-5 Material Change:

Best Practices on Documentation and Investor Communications

Hosted by Carolyn Lee

SPECIAL GUEST

John D. Tishler, Partner at Sheppard Mullin

SPECIAL GUEST:

JOHN D. TISHLER

PARTNER,
SHEPPARD MULLIN

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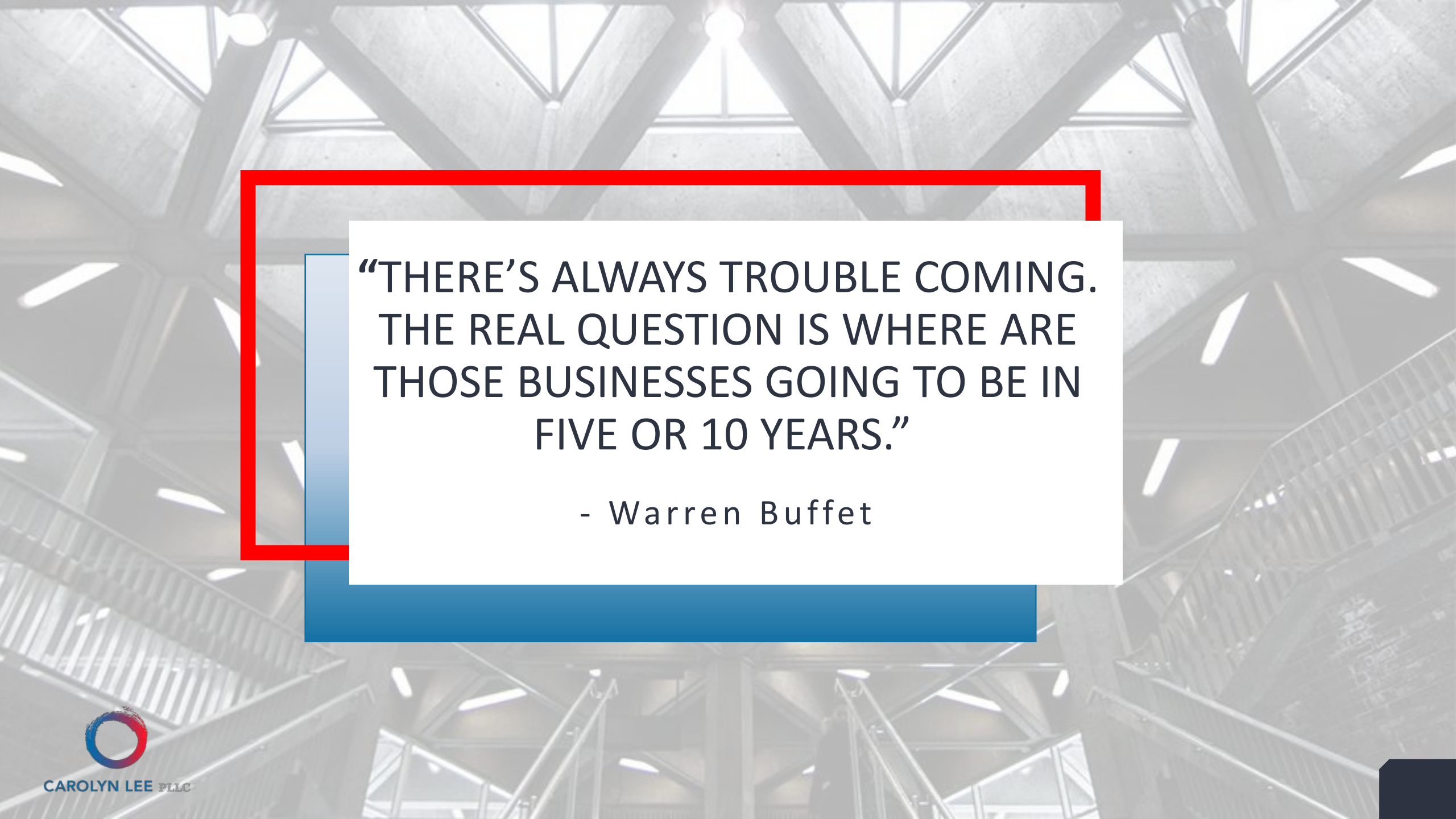
“THERE’S ALWAYS TROUBLE COMING. THE REAL QUESTION IS WHERE ARE THOSE BUSINESSES GOING TO BE IN FIVE OR 10 YEARS.”
- Warren Buffet
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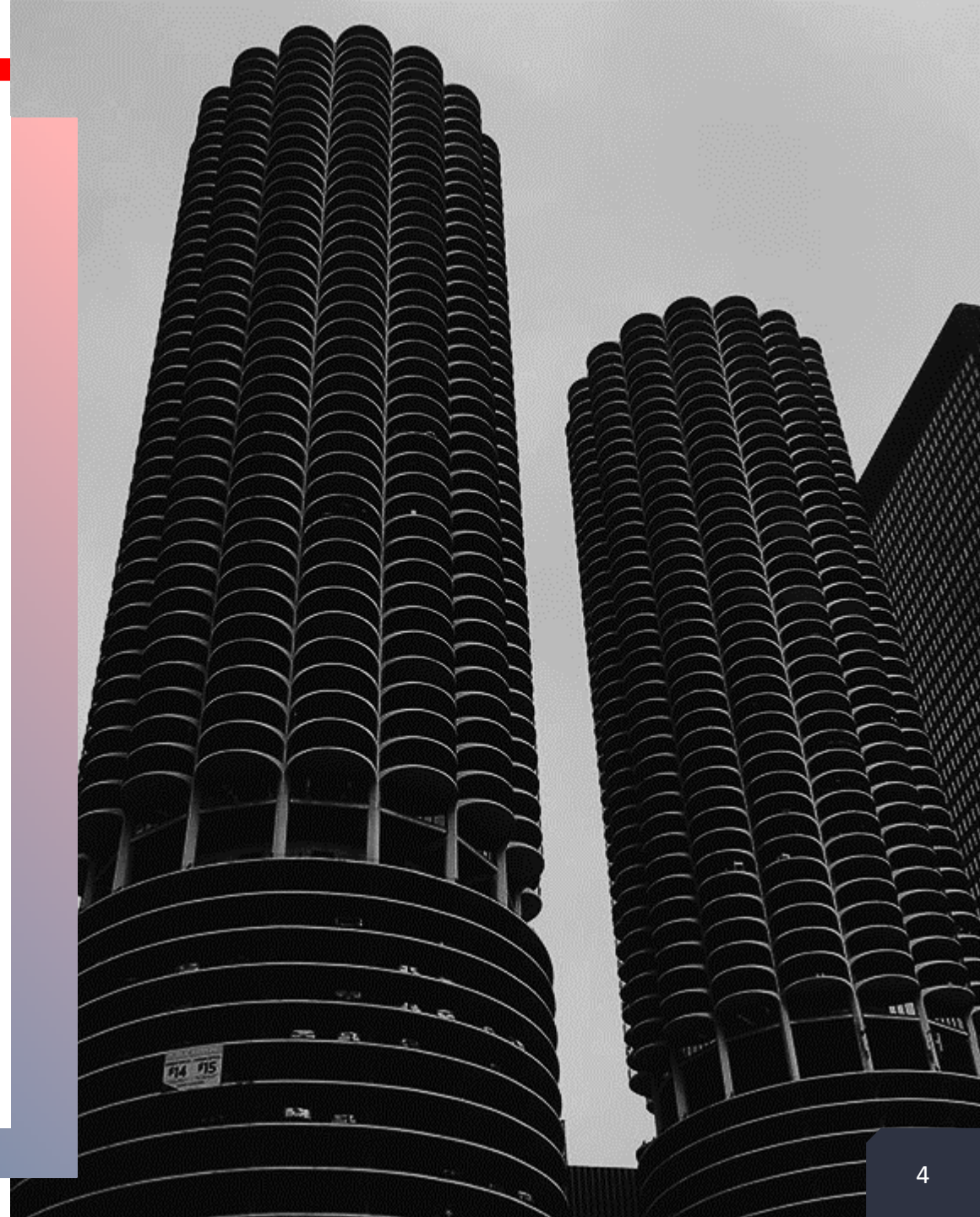
COVID-19 EFFECTS ON EB-5 PROJECTS

- **EB-5 Construction and Operations Changes**
  - Delay in construction and/or stabilization
  - Work stoppage or closure
  - Pivot to something new

- **Affected EB-5 Criteria – I-526/I-924, I-829, I-924A**
  - Job creation – prospective and retrospective
  - Material change – before CPR admission
  - Promotion of economic growth - always



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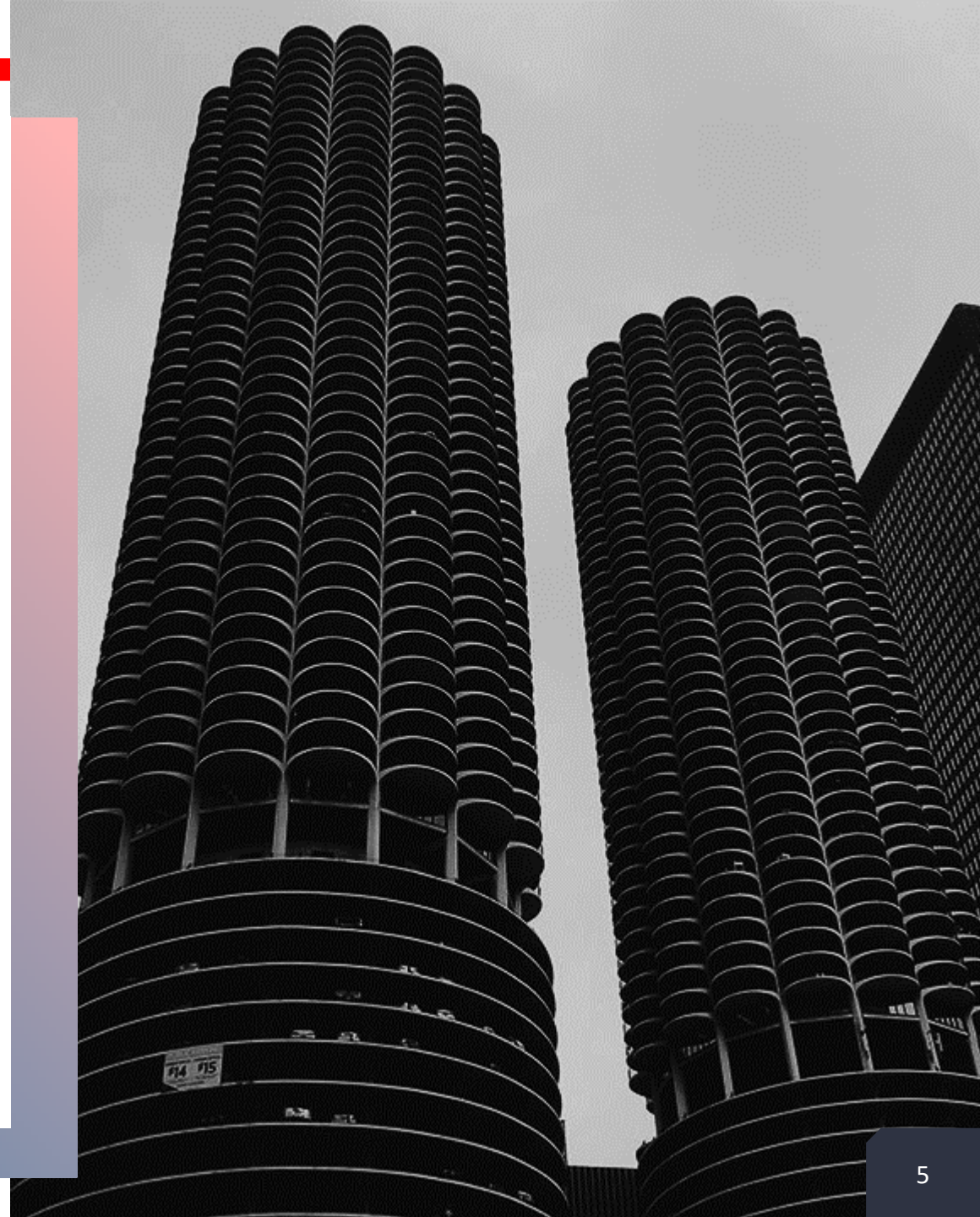
COVID-19 EFFECTS ON EB-5 PROJECTS – CONT'D

- **Borrower Defaults**
  - Temporary forbearance
  - "Force majeure"
  - Loan modification
  - Bankruptcy
  - Before job creation
  - After job creation



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“MATERIAL CHANGE” CONCERNS

- Undefined
- Critical importance of WHEN it happens
- Project delay can be trouble
- Project derailment usually trouble
- Long processing times and visa backlogs are bad

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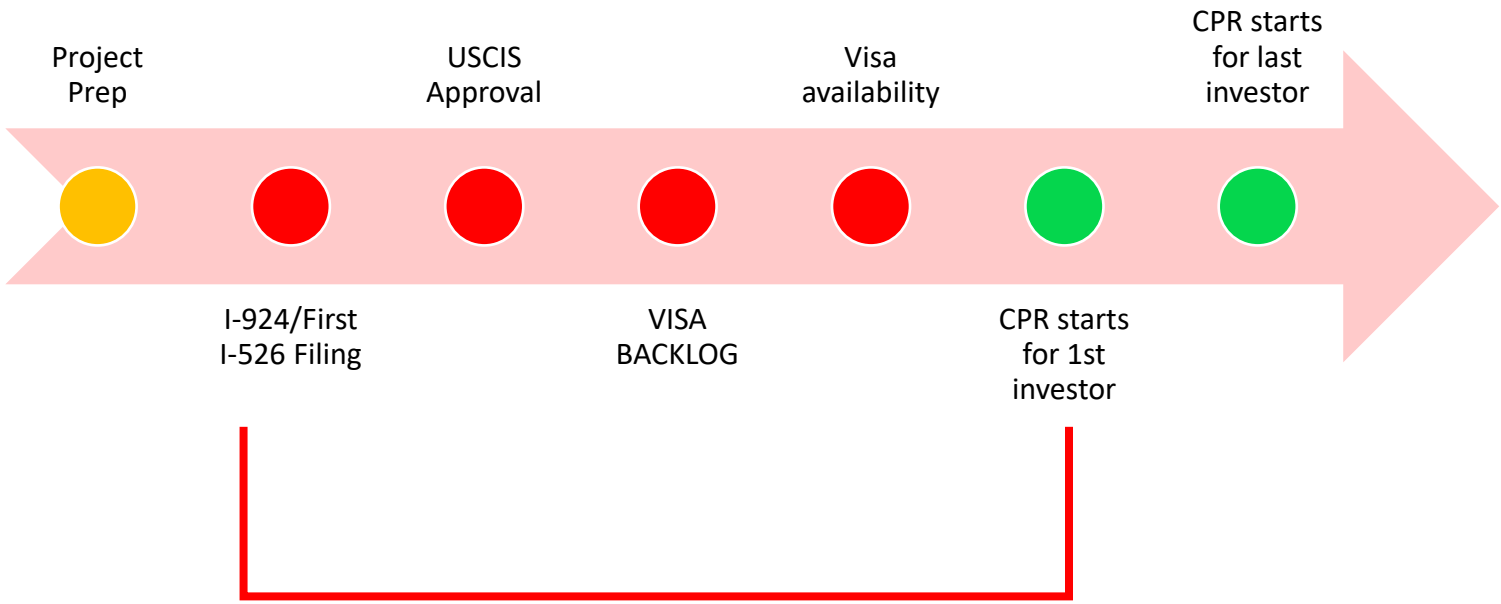
MATERIAL CHANGE EXPOSURE PERIOD



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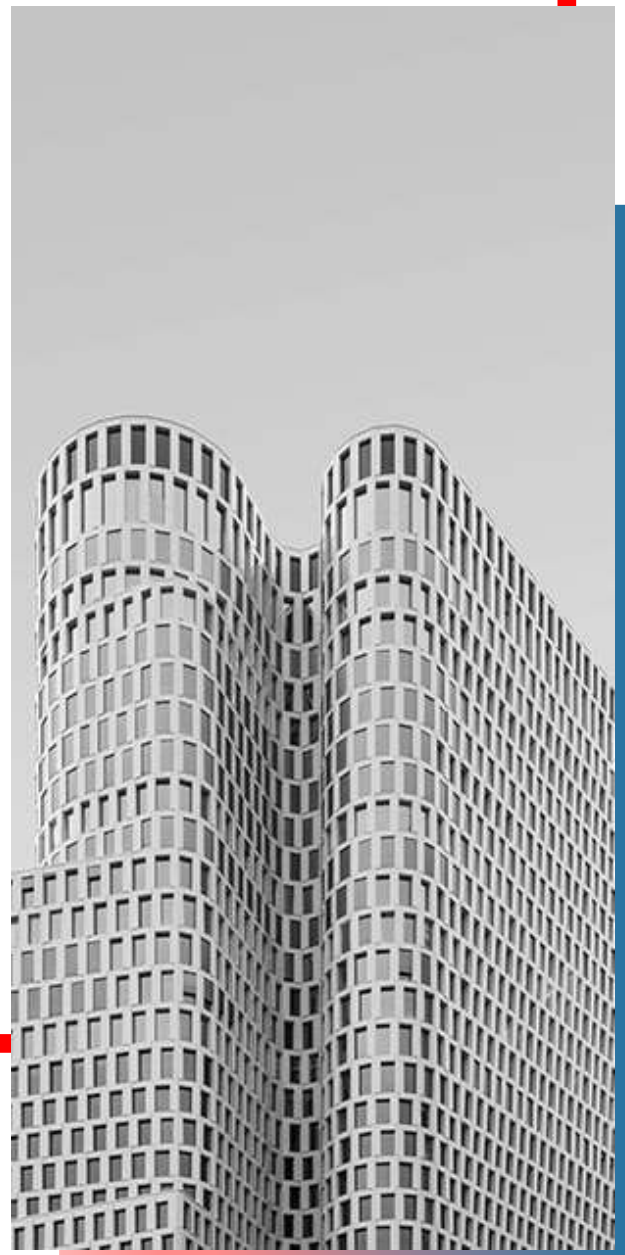
LEGAL ISSUES FOR NCE LENDER

- **Effect on ongoing offering**
  - Strongly consider updating offering documents re: COVID-19 effects
- **Investor consent needed for loan modification?**



- **Related party issues and associated legal issues**
  - Duty of loyalty/good faith
  - Consider third party advisors
- **Realistic assessment of alternatives**
  - Does NCE have legal right to foreclose?
  - Does NCE have the ability to run and/or sell property as REO?
- **Documentation of decision**

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INVESTOR COMMUNICATIONS

- What communications are legally required?
- What communications are best practices?
- Role of immigration consultants

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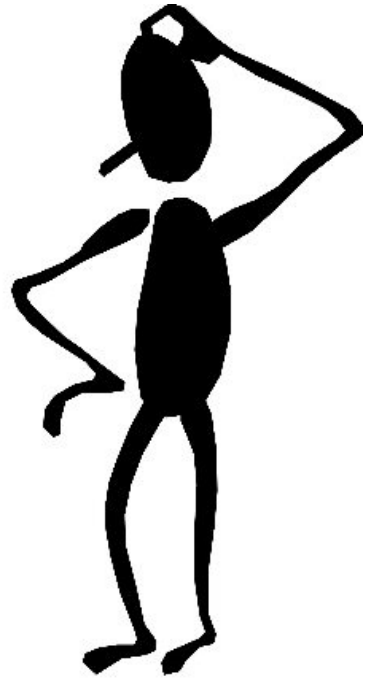
REDEPLOYMENT

- Ill-defined
- Effect on reasonable time to redeploy
- Effect on investments available
- Re-underwriting proposed redeployments
- Is previously obtained investor consent still valid?



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USCIS REPORTING/DOCUMENTATION

- Exploring facts
- Investor mapping
- Measuring similarities vs. changes
- Reasons – “force majeure”
- Mitigation
- I-829; I-924A; I-526/I-924

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EB-5 LEADERSHIP

- **Chair** of American Immigration Lawyers Association (AILA) National EB-5 Committee
- **Legislative Counsel** to Invest in the USA (IIUSA), the largest EB-5 trade association
- **$2.5 bn EB-5** capital raised by U.S. project clients
- **Thousands** of successful investor cases

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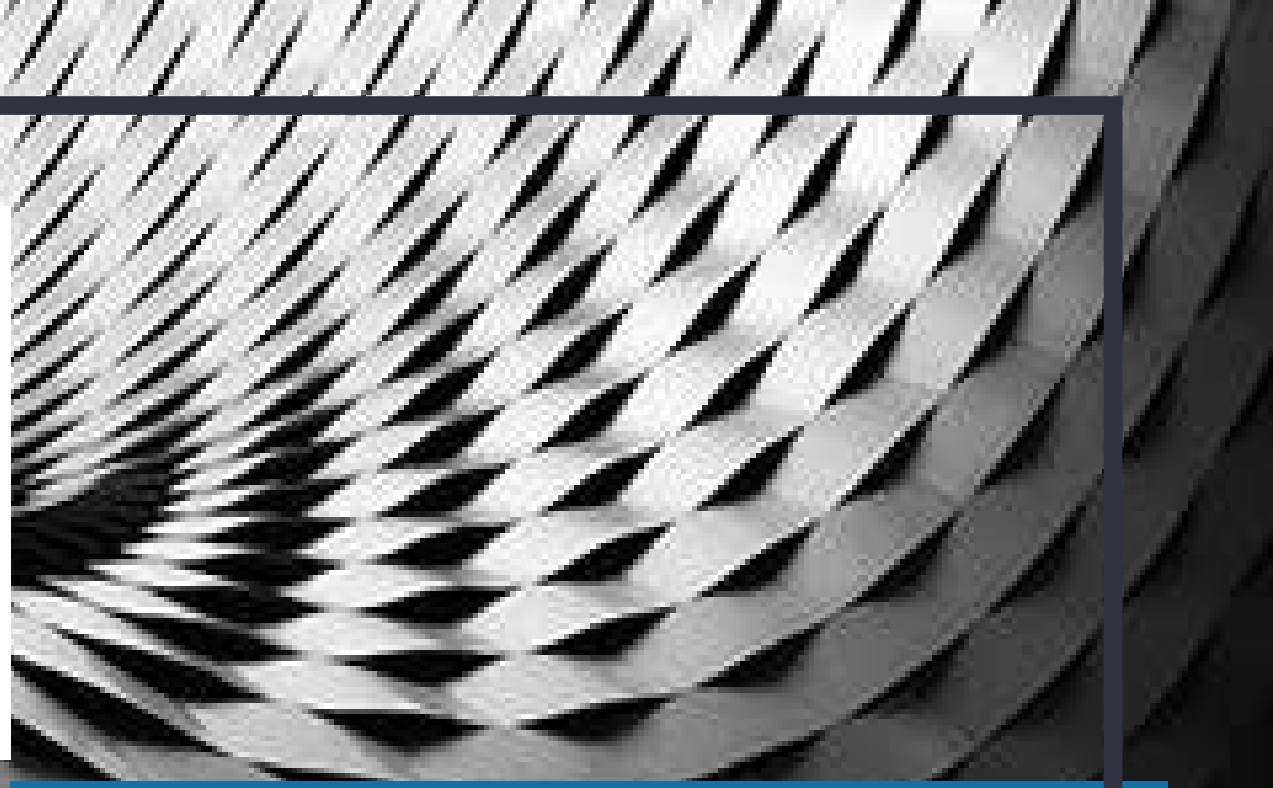

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