Retail and Multi-Family Real Estate Development for Overseas Investors

August 25th, 2021

Presented by Jonathan Bench, Steve Chianglin, and Simon Malinowski

This webinar audio has been transcribed by an automatic transcriber.

Jonathan Bench 0:05

Morning, everyone, or good afternoon or evening, wherever you happen to be in the world. Very happy to have you with us today. We'll give it two minutes and then we'll start let everybody get logged in. We still see the attendee number going up. So we'll wait for a minute.

Okay, that's two minutes after the hour. Thanks, everyone for attending so far, we'll get started. I'm Jonathan Bench. I'm an attorney with Harris Bricken in our Salt Lake City Office in Utah, we have also with us Steve Chainglin from our Seattle office, Washington and Simon Malinowski from our office in New York City. This is the third part of a three part series on us real estate for overseas investors. In the first webinar, we talk generally about things that overseas investors should consider when they want to buy real estate in the US. The last webinar after that the second webinar, we talked about urban and commercial real estate. Today's webinar, we're focused more on retail and multifamily properties. I think that we can. Let's do a quick introduction, gentlemen, algo. First, I'm in the Salt Lake City Office, I spend a lot of time working with international companies, and investors who are bringing capital bringing employees bringing business operations to the United States. I have clients who are in India, major parts of Europe, Africa, and South America, Central South America, and some from Canada, which is doesn't feel very foreign, but it's still foreign for us in the United States. And so I ended up talking to investors and business owners quite a bit about how to do operations in the US and really get a global picture on how us laws work types of us entities that you could use, and also how to how to bank in the US and how to move your money in and out of the US from your business operations. Steve, why don't you go next and introduce yourself?

Steve Chianglin 3:45

Sure. My name is Steve Chainglin. I'm from the Seattle office of Harris Bricken. And my practice mainly consist of real estate and business matters. So I regularly advise international clients on aspects of real estate transactions. So from acquisition, due diligence, deal structuring, as well as resolving commercial disputes. A lot of my clients are real estate investors, who are they have projects such as apartment buildings, strip malls, and condo developments. And so many of my clients are from overseas. In the past decade or so, I see that in Seattle area, there's been an uptick in foreign investors coming to the Washington State area. A lot of them are from Canada, China, Taiwan, Japan, and South Korea.

Simon Malinowski 4:53

Simon, Simon Malinowski. I'm the managing attorney in our New York office and the majority of our client base in New York, our real estate developers and real estate investors kind of throughout the real

estate space. So, you know, that includes multifamily residential rental units, commercial properties, and then ground up development. And you know, our client base has a very international bent to it. There's a strong base of Israeli Russian and Chinese real estate investors and developers. And we really aim to guide our clients throughout the real estate development process, from acquisition through sale, rental and disputes that come up along the way and after the fact.

Jonathan Bench 5:44

Great, thank you. And while everyone is well, I'm thinking about it. If you have any questions during the webinar, please drop them into the q&a. And we'll answer them as we go along. We like this to be as conversational as possible. And second thing if you are on social media, if you're on LinkedIn, Facebook, Twitter, you can find us there. We blog quite a bit. We share articles, we share our thoughts. And so you can look for us for Harris Bricken, but also for other attorneys. And depending on what areas geographically you're interested in. We have attorneys on the west coast, East Coast, and then international as well. So to kick this off, I thought it would be interesting to talk about how you get into business in the US in the real estate market. If you're an overseas investor, often you may have a friend or a family member who is looking to acquire property they want they want extra capital. And so the question is an overseas investor is if I have a business partner based in the US or even another foreigner, who has decided they want to invest in us real estate, how do we go about getting into business together, we like to throw around the term joint venture. Joint Venture is a very loose term. And it's really not even strictly a legal term. In the United States, though everyone uses it as if it is, when we talk about joint ventures, you can either enter into a contractual joint venture or an entity joint venture. So contractual joint venture just means that you are entering into a contract of some kind to go into a business venture, you're going to share profits, you may share some of the losses, you may provide personal guarantees, whatever the structure of your business relationship is, it's all captured into this contract. And usually, that's an early stage kind of arrangement, right? Maybe you don't want to form a new entity in the US. Maybe you don't trust your partner, maybe you don't want to deal with the headaches of the extra tax reporting, that you'll have to deal with if you have an extra entity in the United States. And so a lot of times I have this first level of conversation with investors, which is how do you want to get into the United States? How deep Do you plan on getting into the United States in the future? And also, what kind of tax exposure? Do you want to United States taxing authorities? Do you want the state and federal taxing authorities to to know you are here doing business? Do you want them to to be able to contact your home country, taxing authorities? Or would you rather keep all of your US tax obligations strictly in country? And so these are all questions that you have to think of early on when you're deciding how to do business in the United States. If you decide to form some type of entity in the United States, the question is which of the 50 plus US states and jurisdictions do you choose? Naturally, you would think to form an entity in the state where the real estate will be located. And that works most of the time unless you have strategic reasons for choosing another state. For instance, Delaware, I'm going to pause for a second after this comment and have someone talk a little bit about real estate investment trusts. I'm talking about smaller, smaller ventures. Most state authorities do not care whether you have a local state company, a local state limited liability company or

another foreign state Limited Liability Company, because they're going to look through the ownership to you, wherever you are. And the question they care about in the US federal government cares about on a tax perspective is where are you based? Are you a US person? Or are you not a US person? And so that's the big question. The question of where you form your entity is largely a strategic question. And and sometimes it's just for optics as well, you know, someone who is doing business with you. I practice for six years in the state of Maine, and Maine tends to be very, very closed door kind of state. And so if they knew you were an outsider and outsider for them would be someone from Massachusetts or New York, right? If you're an outsider in Maine, they might not want to do business with you. But if you have an entity that is a main entity, and then they may not ask the question where you're from the that usually comes into conversation anyway. So Simon, can you talk a little bit for a minute about real estate investment trusts and how those will differ from a more simple arrangement where someone is just partnering with a friend to invest in commercial, retail or family real estate?

Simon Malinowski 10:11

Thanks. In a lot of ways, it's, it's kind of like investing in a company or a stock. And you know, the entire concept of a real estate investment trust is it's kind of a short circuit way of partnering with someone who's really experienced in a certain category of Real Estate Investment and Development. And so typically, the way that real estate investment trusts work is that there is one, it's kind of treated as a as a stock in the US. So by that there, there are public disclosures, a lot of real estate investment trusts are actually have gone public and are publicly traded. And, you know, the idea is that you invest money in this company, they own several different properties and soft end times, it's in a single type of class of property. So, you know, there are rates in New York City that specialize in owning rental buildings, and they'll own six 710 20 rental buildings in the city, but then there are other rates that specialize in owning multifamily or retail. And, you know, the kind of appeal for a lot of investors is that it, it takes out a lot of the kind of hard groundwork that needs to be done. And by that, I mean, you're investing with an operator who has experience in this industry, oftentimes, the properties are already purchased and fully functioning, and you put your money in and it kicks off, effectively dividends during the course of your investment. Because as the property generates income from a rental perspective, be it commercial, or residential. And the rate then disperses monies to its investors. And, you know, there are lots of kind of pieces of information that are provided to investors along the way, in large part because it's treated like an investment vehicle, you know, so all of the company's holdings, its expenses, all of that is kind of provided to allow people for the opportunity to really evaluate what sort of return they can expect on their investment in a read. And, you know, because of the transparency of it, because oftentimes, the actual rate has a track record that investors can look at, and really do their due diligence. It's something that that lots of investors, both foreign and domestic, and find to be very appealing.

Jonathan Bench 12:55

So for overseas investors who want to set up their own read is that are there restrictions in the US on them doing that? Or it can any foreign individual or company set up a repo as long as they are doing it according to the US laws?

Simon Malinowski 13:10

Yeah, and, you know, the one thing I will say is, you know, there are rates that have four foreign ownership. And, you know, ultimately, what we often see happening is partnering between foreign operators and us operators, and that's something that we're going to talk about as we get further into this. But, you know, one of the, I'll call it impediments to operating a read from outside of the US is this kind of the same degree of difficulty that we talked about when just entering into a specific market, on your own, which is, you know, in order to be able to generate the returns on investment that make it worth it, and to make it appealing, you really do need to have local knowledge. And while it seems like the sort of thing that is really appealing and easy to do, and by that I mean, like, you know, accumulating a package of different properties and it becoming kind of your portfolio, that that oftentimes is easier said than done, particularly because of the local specificities with respect to real estate markets.

Jonathan Bench 14:32

Okay, some great insight. Thanks for that. I'm going to talk generally about about real estate investing from a from a purely investment standpoint, so not not a public market, but I'm talking about if you are the one investing money with a friend or another company or you are the one who is raising funds to try to package together to form some kind of fund or some kind of investment vehicle and this is not a public market. In the upper right, this is a private vehicle. In the US and around the world, we call that creating a security, where you take money from a from others who are not involved in running your business. So even though real estate itself once, once it's up and running, it can be quite a passive investment. But at least in the initial phase, when you're identifying partners, when you're identifying properties, when you're taking investment, when you're talking to the bankers, when you're actually purchasing the property. There, there's a lot of work going on. And you may not think of that as an operating a business. But from a US standpoint, that is what you're doing you are you are you a real estate management company, and you are, if you're taking money from, from people who are not involved in the management alongside you, then you are issuing securities. These securities can be straight equity securities, they can be debt securities, where you're just taking a loan, a lot of times in the real estate market, I have a sister who is a real estate agent. And she talks very loosely about the terms joint venture and getting into a business opportunity. And so and this is common to a lot of realtors who I've discussed this with that they don't always think about giving a lecture giving someone a promissory note, right, I'm giving someone a note on my property. And they don't think anything about it. And they should, it's something that, that the US securities regulators, the state and federal securities regulators take very seriously, if you take money from other investors who are not involved in the management of the business alongside you. So every time let's say you have two scenarios, one is where you're receiving the money others where you're, you're putting the money in. So if you happen to be

raising money, and I'm not talking about your home markets I'm talking about you come to the United States or visiting friends, and you are talking about a business opportunity to put money into buy real estate, develop real estate. And then you are you're promoting a business opportunity, and you need to at least consult with a US business lawyer who understands securities, so that you can make sure that you're not already going against regulations that are in place to protect investors, right the US market, we're very serious about protecting investors from fraud, but also from business opportunities that haven't been fully fleshed out or fully disclosed. And so it'll be important for you to find out what's going on in your market, how the state where the investor sits really matters, because each if you have an investor in California, you have an investor in Florida investor in Washington, there are different laws that govern how you can raise funds there for your project. So I highly recommend talking to a lawyer who's practiced in this. The interesting thing about real estate is that most states that I've looked at in their securities laws have a carve out most of the time, you have to register the securities or you have to have an exemption from the registration, which means there's a reason why you don't have to go and fully registered and providing all the information that you would, that's comparable to a public securities offering. And real estate is one of those, but only if the investment is secured by real estate itself. So if you are and this is kind of a rule of thumb, you still need to check with an attorney. But if you are raising funds, and in exchange for raising the funds, everyone who puts money in will be named as a mortgage holder for the property that is being invested in, then in that instance, you usually have a safe harbor, and you don't have to do anything else to comply with securities laws. If that is not the case, if you're raising, you know, million dollars from three or four friends, and you go and buy two properties, and the only thing that your friends get in exchange for the money is a percentage of the business or a percentage of the profits, but they're not getting a security interest in real estate, they're not getting a mortgage or a trust deed in exchange for that, then that is the situation where you really need to look and see what securities disclosures you need to make. So that's on the that's on the receiving end. If you're on the giving end, where someone in the US is raising funds from you, there will be certain hoops that they will need to jump through as well to be able to accept the money from you. Now, if you're an overseas investor, and not based in the US, then your home secure your home country securities laws will apply. And often the investment documents will push all of this responsibility on you. The company or the person that's raising money will say you need to make sure you understand your home country securities laws because we don't know them. We don't want to go to the trouble to find them out. And you promise that by investing with us you're still you are complying with all of your home country laws. Now it's a bit of a sticky situation. If you are on the company side and raising money from overseas and you don't make those representations. And part of that is because even if you the home country of your of your investor may have very strict laws And you may violate those own country laws. And it may not matter to you because maybe you never intended to go to Thailand or Vietnam in the future. But maybe you will. And so you don't want to unintentionally create a liability out there and give a person who is accusing you of fraud later a reason to go to their government to get, you know, Visa banned or from coming into the country or from leaving the country. So, some things to consider if you're on the capital raising side, or if you are the one putting money in, make sure you talk to a securities lawyer so that you can understand where those lines are. And make sure that as an investor, you have protection so that if you start to get nervous about your investment, you're comfortable knowing how you can unwind the investment, if that's possible, if you can get your money back. So with that, I'm going to kick it over to

Retail and Multi-Family Real Estate Development for Overseas Investors

August 25th, 2021

Presented by Jonathan Bench, Steve Chianglin, and Simon Malinowski

Steve, for discussion on why we invest, why this type of market, retail and multifamily market is a good market to invest in, Steve.

Steve Chianglin 20:57

Thanks, Jonathan. So why invest in retail and multifamily properties? Well, I think there, there are many reasons, but I will just go through some of those reasons. The first one is I think, the United States has one of the largest established commercial real estate markets in the world. And with the large market, you will have a variety of buyers and sellers. And you also have an established and and reliable financial system to fund purchases. So whether you're raising funds, you're going out there to raise funds from investors, or you're seeking loans from financial institutions or or hard money lenders or private investors. There is a system out there that that is well regulated. And once investors understand these systems, and also how people what type of metrics that are used in valuating the viability of certain projects, and also how they can determine Oh, why I want to lend this money to you or why I will want to invest with you on these certain projects. Investors in general can make predictions and projections and, and with this predictability, investors will be able to, to be able to project I guess, and repeat the process over and over again. So that's the first reason. A second reason is, the United States has one of the strongest legal systems that protect property rights of investors. So again, it goes along with the first point is that with this legal system allows for predictability and security of investments as long as you know the rules. So if you're overseas investor, and you're raising funds, or you're seeking out loans, it is very important that you understand what are the security issues that you are going to be facing if you're going to be raising funds from your home country, or if you're raising funds from the United States. And also, if you're getting loans from financial institutions, you want to understand what are your liabilities in getting seeking financial lending from these institutions. Third, one of the very important pros of investing in retail multifamily properties is that you have a lot of control on increasing the value of your investments. So what I mean by this is that as an investor of retail and multifamily properties, one of the things that you're focusing on is trying to increase the rent, right, and also the value ation of your property. By re by making improvements or renovations to a property you can actually unlock hidden value of these of the real estate. So what I mean by reinvesting in, in the property through capital improvements and property enhancements, will have will usually have immediate payback because by making these improvements, you can potentially Li sell your properties at a higher rent. And also with this control, sometimes a property or project is poorly managed by the previous owner. And by taking over the property and buying it and finding better property managers. You can find better tenants and with better tenants, usually you can increase the cash flow and you'll find out that in the United States, a lot of the valuation how you determine the valuation of commercial properties is dependent on cash flow. And so by increasing rents, you can actually increase the value of your projects. And so by increasing the value of the projects you make, you're able to make a good financial investment. Also, you can give returns that to your investors or also be able to pay down your debt service that you get.

Another reason for, for investing in real estate is, is the potential for inflation hedge. As we know, and I think we talked about this in the previous webinars is that, especially in this current market, where federal governments or national governments are, are printing out money, a lot of investors are seeking ways to hedge for inflation. So with commercial properties in multifamily, and also retail, usually, as a landlord or property owner, you enter into contracts or leases with your tenants. And they could be in the duration of the year to five years to 10 years. And with these, with these leases, and these contracts, usually will tell it was state Oh, how much rent you're going to be getting back. If, you know, if certain things were to happen, are you able to increase rent. And so with these multi year leases, or single year leases, you create stability. And, and as a retail, as a commercial real estate investor, a lot of times you're seeking for stability. And once the lease term ends, if the market is improving, the investor or the owner of the property will be able to increase the rent to reflect the market rates. And so with this with real estate markets, not only what you have a piece of land that you own, but you also have contracts, that allows you to collect cash flow. And so with these two, two main things, you will be able to eat generally you'll be able to hedge against inflation. And so these are some of the things that I think are very important for foreign real estate investors for looking for retail and multifamily opportunities.

Jonathan Bench 27:35

Steve, I have a question for you. Sure. Would you say that your client base do that invest in retail and multifamily properties? Do they tend to run the management side themselves? Or will they use a management company? And it probably depends on whether they're based in the US or whether they are? Whether they're based abroad? Can you comment a little bit on that? Sure. Yeah,

Steve Chianglin 27:59

I think it's a I I've, I've run into different types of investors and they have different thought processes, on whether to use property management companies to manage the properties, some smaller, smaller, you know, single family, rental home owners, they will just manage it by themselves, because they are located there close by and they can, they can, they could interface with the tenants, be able to show the properties to the tenants. But if you're a foreign investor, and you are not living in the place where your property's located at, I think it is very wise to seek out the advice of a good property manager. These property managers not only provide you with value and in finding saving you time saving the investor time in finding investor and finding renters, they also bring a lot of value to the investor that the owners themselves because they will be able to provide good business guidance on how to you know, increase the value of the property, how to increase rent, you know, whether a certain unit should be renovated, great. And also when you when the when the investor is looking for new renters. You want to be able to have a good person to be able to run credit checks and do background checks on these renters to make sure that they are good renters. I hear horror stories all the time from potential clients and landlords calling me up and saying that, hey, you know, I was managing my own property and I forgot to get this document sign or you know, I I failed to Run a credit check, if I had run a credit check, then I would realize that this guy was evicted three times or four times previously. So I think on. on the business side,

if you are a foreign investor looking at opportunities in the United States, that's one of the main things that you want to be one of the, one of the advisors you want to be closely looking at is a property manager, a good property manager will bring you a lot of value.

Jonathan Bench 30:34

So on same question, since you're on the other side of the US from where Steve is, what do you what do you think about property managers?

Simon Malinowski 30:41

I think it really depends on on the client and the investor, you know, a good portion of, of our client base, as I mentioned before New York, our developers, right, so their value add is to take underutilized or undervalued assets, and renovate them, particularly in the multifamily context, and then actually operate them themselves. Right. And in that circumstance, the owner is acting as the property manager, and there is a good financial reason for that, which is, if you have the infrastructure to do it, if you have the history of doing it, it adds to the value of the property for you, right, because part of the, the kind of cost of hiring a good property manager is literally that the cost. And to Steve's point, you know, there are investors who don't have that institutional knowledge and don't have the infrastructure available, to step into an investment to say, you know, what, we're gonna manage these, you know, five properties that have 50 tenants in that, because it's a real undertaking, and if you don't have the experience doing it, you can run into a lot of problems really quickly. And in those circumstances, and we do have clients who do it, and, you know, once they have their property ready, once they've done, you know, their due diligence, and they've gone through with the acquisition, they bring in someone who has a really good reputation, who has real market knowledge and history, with with the location and the issues that arise for that jurisdiction. And at that point, right, that's, that's kind of the value add for the for the owner, which is, you now have a property that is delivering returns on your investment that you don't have to think about, because you have a property manager, who knows what they're doing. So it really depends on the investors experience. And their comfort level with taking those sorts of risks, right, because there are some people who really want to try doing it, and decided that they're going to manage their own properties, and turn out to be really good at it. And the thing is, is it at a certain point, you kind of have diminishing returns, and if you reach a critical mass on properties that you own, unless you decided that you're spending your life, being a property manager for your own properties, and hiring people, like, you know, at 50 tenants, it's impossible to do alone, it just is, that's there are too many things going on. I actually had a conversation with a client about this last week, who is kind of in this situation, right where it is on the verge of being at the point where they need to hire a property manager, they don't really want to because they enjoy having the personal connection to their tenants, and to providing the sort of experience that they envisioned when they were developing these properties. But at a certain point, you just can't do it anymore. And at that point it you have to do your due diligence on the property manager and just kind of take that leap.

Retail and Multi-Family Real Estate Development for Overseas Investors

August 25th, 2021

Presented by Jonathan Bench, Steve Chianglin, and Simon Malinowski

Jonathan Bench 34:10

Let's talk for a minute about the value of a property manager when you are dealing in multifamily properties, because there's a big difference between having tenants who show up for work, right ramming a retail kind of tenant in a strip mall or something like that, versus having properties with real people living in them. 24 seven, having real people issues, you know, the things like ventilation, electricity, you know, all of this can. Can you guys talk a little bit about the challenges of being a property investor, where, where you have these properties where you have real human beings in them all the time.

Simon Malinowski 34:49

I'm sorry, gentlemen, you cut out for that last bit.

Jonathan Bench 34:52

And just wanted to comment for a second about the different challenges that come up where we're dealing in properties that have families And then versus, versus regular businesses.

Simon Malinowski 35:05

So I mean, on this, I, in my view, the single biggest discrepancy between the two is really kind of expectations, right. And when you're dealing with the residential unit, the first thing is, is you kind of have the baseline of it in place already, because in almost every jurisdiction, unless you have a functioning residential rental unit, whatever local jurisdiction is responsible for overseeing that property, will never let you rent out units, unless you've kind of reached that baseline. And from that point on, right, it becomes really a much more, again, depending on your property, your portfolio size, but it becomes a much more kind of personal and interactive relationship, right? You have tenants who have to interact with each other, have to interact with their surroundings have all of the things that happened to them on a day to day basis, and oftentimes, right, that gets reflected on the landlord. And I know that that sounds kind of like a crazy thing. But you know, for example, right, in New York City, right now we're going through a heatwave. And oftentimes, people have problems with their air conditioning, because of the you know, the toll on the power system. And in residential buildings, right, there's just not as much time and money devoted to like, having a state of the art air conditioning you system, unless you're like in a class a building are really luxury residential buildings, right. So like, if you've invested in it, kind of older, multifamily building that you've renovated, you're probably talking about, like, in a built in unit. And so if someone comes home from work, and it's 95 degrees outside, and they have problem with their air conditioning, the first person they're calling is their landlord. Or if you've gone through the process of hiring a management company, the management company, and saying,

like, my air conditioning isn't working, we need to fix it immediately. And so like, it's a much more, you know, all of those sorts of problems that happen if there are scuffs here, and there are issues with, you know, the functionality of a rental unit, you're going to hear about it. And if you're not really interested in having that sort of hands on relationship with your tenants, because it's just inevitable if you have a certain number of tenants are going to be issues that come up, and you're going to have to deal with them. If you're a property owner. in that circumstance, it probably makes a ton more sense to have a property manager because they deal with it for you, they have the expertise, they have the people on staff that just kind of show up and deal with the problem. Versus on the retail side where, you know, one, usually, usually, the landlord is really responsible and involved in the built out of retail spaces when a tenant comes in. Because we're not talking about a one year lease, it's normally at least five years oftentimes 10 in more kind of sophisticated transactions, 2025 year lease terms, and there's work that's done to those units to really customize the space for the tenant. And when you have that circumstance, oftentimes, you're contracting with the tenant to assume a lot of those obligations. So for example, lots of multifamily, like retail unit, owners will enter what's known as a triple net lease with their tenant. And what a triple net lease means is, the landlord provides the space to the tenant. And that's it. Like the tenant is responsible for everything that happens, which means they they're responsible for rent, they're responsible for maintaining the premises, they're responsible for all taxes and all utilities. It is kind of like a hands off arrangement where we've given you the space and you now have to run with it. And obviously, in those sorts of circumstances, you know, property managers are less important because it's the tenants responsibility, the tenant then kind of becomes the de facto property manager. And, you know, generally speaking, while that's not often the case, in terms of them being triple net leases, because the tenant is so much more involved in actually building out the space and maintaining the space and actually using it for their function

their kind of tends to be less of a hands off approach in the retail space, because it's just not as necessary. Steve, I don't know if that's been your experience as well. Yeah.

Steve Chianglin 40:15

It is really dependent on the situation like you said, Simon. I think that is that is very correct. And in addition to what you were saying about different types of leases in the retail context, with the triple net leases, in the multifamily context, a lot of times the allocation of rent and also the expenses are different too. So with retail and multifamily experienced, investors will find now there are different in this industry practices on how to collect rent, how to allocate the expenses to the tenant. And also on top of that, there are also different types of laws that govern commercial retail spaces, and also residential multifamily leases in Seattle, and I'm not sure whether that this is the case in in New York, but I would assume so is that residential leases they're governed under a state statute called the residential tenant landlord act governs all of Washington State and the that that statute imposes a lot of obligations to the landlord. Not only that, not only does the landlord have to provide a certain condition for the residential tenant to live in, there are certain restrictions on you know, if you're going to collect

security deposit, how much can you collected and what kind of requirements are there before you can keep the security deposit of these tenants and in addition to that, there that state law, there's also local jurisdiction or rules that govern residential leases. And in the city of Seattle, after the COVID situation, there have been a lot of there have been a COVID moratoriums that restrict landlords from evicting tenants if the tenant is unable to pay rent. So, you know, retail context is more usually more commercial driven, or the parties are running businesses, and the parties are more sophisticated. On the residential side. This, the rules are assuming that these tenants are less sophisticated and they require more, more protection. So which was somewhat makes sense. But sometimes, landlords will find out that they will run into tenants who know the laws really well, and they are able to gain the system. And so a lot of times, having a good property manager or maybe legal counsel to support the landlords are extremely important when you run into situations where you have a tenant who knows their laws really well. And they are trying to get away with paying rent.

Jonathan Bench 43:30

So let's talk for a minute about identifying properties, and then figuring out if the property is any good, right? We call it due diligence in the legal world. How do you how do you do that? What's the best to hire someone to do that for you? If you have an eye for it? Can you do it online from 5000 miles away across the ocean? What do you think about that? identifying properties, and then and then actually doing due diligence on properties?

Simon Malinowski 43:57

I mean, I, I think that you kind of do a combination, particularly if you're doing it from overseas, which is kind of online research. And speaking with brokers. And really the primary starting point for any real estate investment is really is identifying the jurisdictions that you're interested in. Because that's really kind of the starting point, either from a internet search or from talking to brokers. It's generally very market specific. Right? So there, there are websites that you can look at for opportunities for investment, but generally those aren't national. Generally, those are market specific. There are very few brokers who operate on a national scale. I mean, and the ones that do I would be kind of skeptical of because to really fundamentally understand what's going on in a real estate market. You have to really be embedded in it. And so I think that's step one. is identifying the jurisdiction in which you're interested in making a real estate investment. And, you know, then identifying the properties kind of comes hand in hand with due diligence. And and, you know, there are lots of different considerations if you have, which Steve is already touched on. But, you know, generally, I kind of place it in three separate buckets. The first is just the overall market conditions, right. So, for example, if you're interested in investing in real estate, I'm, excuse me retail real estate, and understanding what the retail market is like, it's really important, right? So, you know, New York is historically had incredibly strong retail market. Right now, in the aftermath of COVID. There are way more retail vacancies and existed kind of then than ever. And so all of a sudden, now, for a lot of people, it's kind of viewed as an investment opportunity, because the market is kind of at a lower point than it's been. And that really applies everywhere, right? You have a

better idea. And in whatever jurisdiction you're looking at, be it Seattle, or Chicago, or, you know, Arizona or Texas, what the market looks like, what properties are trading for, and what the overall direction is of the market. And I kind of put that in one category. What's kind of related to it is two separate things as I view them as soft legal issues, and then hard legal issues. And so one of the things that Steve mentioned, is, you know, understanding if you're investing in, in multifamily, but this also applies to retail, it's like, what's the environment for the circumstances in which tenants are not paying, because ultimately, that's one of your biggest considerations as an investor, what happens if we put all this money into a property, and now tenants have decided that they're not going to pay it because of COVID or for whatever reason. And if you're in a market in which the laws are very, very tenant friendly, and New York is one of those places, my understanding is that Seattle is one of those places where it is incredibly difficult to evict someone who has decided that they're not going to pay. Even if you're getting great rents on paper, that quickly turns into a nightmare when you have someone who's not paying, and it takes a year to 18 months to get them out of your unit. And that's that those are like not an exaggerated timeline. That's realistically how long it could take right now in New York landlord tenant court. And talking to brokers, and really understanding what the ramifications are in terms of making the investments and the risks associated with it really tied to doing your due diligence and understanding what the soft legal market is like, How easy is it going to be to deal with these issues? If we make this investment? The kind of harder and I call them hard, like legal considerations is? What are the laws governing the investment? Right? So like, in a, if you're looking at a retail investment, you know, are you planning on pivoting or doing something slightly different?

What are the zoning regulations? What are you allowed to do with that property? With multifamily? It's the same thing. Are there tenants that have historically not been paying? What are the opportunities that you have to come in and buy that property, and potentially go from a rent stabilized, controlled or controlled building to a free market building, and all of that really has to do with the hard legal considerations, like the hard laws that govern the property? And so like, we have clients who evaluate purchasing multifamily or retail all the time, and the first thing that they do is they check to see kind of what the current condition is of the property that they're considering investing? What did the laws allow them to do with that property? Be it development, renovation, or getting tenants out and doing the same thing? And then, you know, three, where do they view the market going in the future, based on the conditions and if you're, if you're doing this kind of from abroad, and the only way to really, really get a ground level understanding of what's going on, and what properties make sense, and the sorts of things that you really need to explore from a due diligence perspective. It's really either through a broker or if you have trusted contacts in that jurisdiction. And we can kind of talk to you about market conditions and help you evaluate on a case by case basis, what that property what the true value of that property is, and where it could look, depending on what you want to do with it.

Steve Chianglin 50:17

I think Simon touched on a lot of these issues that are very important, the three buckets and the three buckets for investor to understand and to evaluate their investments. And to get into a little bit, get into the weeds a little bit more of the specifics, you know, with the property that you are purchasing, a lot of times these properties are subject to certain contracts or agreements or leases, that the that you as a owner will have to have the obligation to perform. And with that, you know, during the due diligence period, you want to be able to understand what those obligations are, that you will have to perform as a property owner, without understanding that it will be difficult for you to be able to evaluate the value of the property. And let's see, for instance, and Simon touched on this already is that if you want to pivot from retail to something else, are those zoning codes allow you to do that? And if it does not allow you to do that? Can your financial projections still be met? Right? So a lot of these things, the key ish key thing for investors is due diligence, and having a good group of people that can help you understand what are the issues that you want to be aware of, you don't know what you don't know, unless until that loads issues come up. And but with experience advisors, you know, your broker, an attorney or accountant, or your architect, whoever you're working with, or your friend who has a lot of experience in the local market, they will be able to run, run over these issues with you closely. And hopefully you can find somebody that you can trust that your interests are aligned that you can talk to them about your concerns.

Jonathan Bench 52:24

So we haven't had any questions come yet on the q&a. So if you have a question, please put it in now because we're almost out of time. In the meantime, I'm going to ask one more question. Raise one more topic, which is funding financing. Let's say you are not the you're not the property owner, but you are lending to a friend or family or just lending to a business that has either retail or multifamily properties. Are there things you should be aware of pitfalls, I know that single family dwellings lending to a single family who is buying a property is is fraught with all kinds of things. And so we don't really want to focus on that today that that's probably could take its own topic. But if you were a lender, and you want to just put your money to use you have you have 1,000,002 million dollars $500,000 you want to invest? What are some things that that these people should keep in mind when they are negotiating their terms on the loan? And also how kind of the pieces what are the legal pieces, legal documents that need to be in place in order for them to be as protected as possible on that investment.

Simon Malinowski 53:35

So I, you know, the terms of the loan really depend on your relationship with the borrowers what the circumstances are, and then oftentimes really just governed by market conditions, right? interest rates change, on or on really a daily basis. You know, there's the difference between hard money lenders and more traditional lenders, hard money lenders are traditional, like, usually a shorter term loan with a much higher interest rate. And, you know, it really depends on what the circumstances are with you making the decision to lend money to someone who's investing in real estate, in terms of the important documents, this this is one of those things where it is like difficult to overstate how important it is to talk

to an attorney when you're considering doing this, who is in that jurisdiction and who understands the laws governing secure transactions, particularly in the context of real estate, because making a mistake and your loan documents and you're basically the documents that securitize your transaction. And to put that really simply, like the collateral that you get in the event that your lender borrower defaults, if you don't have that, right and it can have like Really what seemed like unfair and drastically bad outcomes. And, you know, one example of that is, I'm going to kind of stick to New York specifically. And there are all kinds of documents associated with transactions, mortgages and lending on real estate. One of those documents is the promissory note. And the promissory note is basically the document that establishes what the terms are on the amount of money that's being loaned, and that person is promised to repay it. If in New York, you do not, as the bob with a lender have physical possession of the original note, in wedding signature, you do not have the right to foreclose on the property. It is a fatal defect in a mortgage foreclosure action. And so if that's something that you don't know, or you haven't been advised on in the process of making a loan on real estate, if someone ends up not paying you, and you decide, you know what I'm going to try to collect on this, I'm going to default the borrower, you can send as many notices as you want, you can sue them, hopefully they have assets, but you can't foreclose on the property itself and cause a sale to repay your debts, unless you have the wedding note. Now, there are affidavits around it, which is, you know, you can say that you lost the note. But if it was never executed, if that step is missed, if you've talked to someone who doesn't know that, that actually needs to be done, you are now in a horrible situation. And so, you know, when you ask the question, what documents are really important? The answer is it depends on what jurisdiction you're in. What doesn't depend is that is the vital importance of talking to a real estate attorney in that jurisdiction to understand what those rules are, what documents are necessary, and kind of the best ways of protecting yourself in the case that something goes sideways. Yeah,

Steve Chianglin 57:12

I'm glad you told me that. Simon. other good thing, I never advise anybody in New York, New York of all promissory notes. Oh, my goodness.

Simon Malinowski 57:22

Yeah, it's I mean, it's the sort of thing that really seems, seems crazy, right? It seems unfair, I made this deal. There's a mortgage that mortgage is recorded. So like, what are we talking about? And, you know, New York Supreme Court, which is our trial level court is like, littered with cases with foreclosures that have been dismissed, because the lender cannot prove that they are in possession of the note, oftentimes, that the circumstance in which this comes up is when loans are retreated. So when the original lender will have sold the loan, and a package of loans to another lender, because, you know, at this point, it would really be a crazy circumstance in which they didn't have the promissory note signed in the first place. But like, you know, unless you know, these things, it's a really easy misstep to make. And all of a sudden, you are in a really, really bad situation. As a lender.

Retail and Multi-Family Real Estate Development for Overseas Investors

August 25th, 2021

Presented by Jonathan Bench, Steve Chianglin, and Simon Malinowski

Jonathan Bench 58:26

We did have one question come in, do either of you have any thoughts on any states or areas that are more tenant friendly, and we would be, we could say discriminatory against out of out of state or out of country, property owners, they've never heard anything like that.

Simon Malinowski 58:48

My experience has been that the political risk isn't really on the lines divided on, you know, evil money grubbing out of state investors. It's more just a general market condition, right? So you have states that are landlord friendly. And their view is, if you're a tenant and you've signed a lease, and you've decided not to pay, well, you breach the terms of your lease, and you need to get out. It kind of doesn't go beyond that. It's kind of a pure equity view. What's the fair thing to do here versus more tenant friendly jurisdictions like New York or Seattle? Were let we're judges say, Well, yeah, I know that that's what the terms were. But we really don't want to be evicting normal people who just haven't been able to make their payments. And so in that circumstance, it doesn't really matter who the landlord is, unless there's like a history of tenant harassment. It's really just the black and white like, do we care whether or not tenants are paying their rent or not? Yes or no. And if the answer is no, then it's really hard to evict them.

Steve Chianglin 1:00:01

Yeah, I agree with Simon on that. Yep.

Jonathan Bench 1:00:06

Great. All right. Well, we're at time, gentlemen, thanks for your participation. It's great to catch up with you as we're all in different states and only get to see each other's faces across the computers. But, and thank you to all of our attendees. We look forward to seeing you on our next webinars. Look for us on social media, and we'll see you next time. Thank you.

Transcribed by https://otter.ai