U.S. Real Estate for Overseas Investors

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Presented by Jonathan Bench, Steve Chianglin, and Simon Malinowski

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Jonathan Bench 0:05

Thanks for attending this webinar today on us real estate investment for overseas investors. We haven't done a poll of the attendees, we assume many of you are foreign nationals either living in the United States or considering doing some investment in the United States. Some of you will be thinking in an individual capacity, others will be doing this on behalf of a company that's considering doing investment in the United States. All three of us are Harris Bricken. Attorneys, we're each going to take a minute and introduce ourselves. So I'll start out my name is Jonathan bench. I've been an attorney for about 10 years, focusing on a whole myriad of things, including real estate investment, I work with a lot of foreign companies that are coming to the United States to set up operations. So work with a lot of US companies who are looking to establish operations abroad, often in Asia, but also Europe, central South America, our attorneys span and count how many countries but we have attorneys in in Asia, in central South America, in the US, of course, and also in Europe. So we all of us are quite international speak. Many of us speak two or three languages. And we we love doing international work. So working with folks like you who are paying attention today, tuning in is what we love to do. And we're all kind of international walks. I'm going to turn it over to Simone next to introduce himself.

Simon Malinowski 1:32

Hi, I'm Simon Malinowski. I'm the managing attorney for Harris Bricken's New York office. And the majority of my client base are developers in New York City, who develop a variety of different types of real estate, multifamily condominiums, rental buildings that are exclusively residential. And, you know, some of the companies are predominantly US based. A lot of them have international investors from Asia, from the Middle East and from Europe. And so we have a lot of experience in terms of kind of helping with the corporate structure and components of it, the local law, portions of it, both acquiring real estate financing, real estate, and then all of the construction components that really are going from the acquisition phase to actually having a fully utilized investment vehicle, be it condo or rental. Thanks so much. Steve.

Steve Chianglin 2:41

Hi My name is Steve Chianglin and I have been practicing 15 years. And most of my practice involves real estate and corporate matters. And I usually my most of my clients are our our clients who are real estate investors from small single family units to multifamily units to strip malls and some redevelopment of vacant lands into condominiums. And also, I'm a first generation immigrants so I can empathize with the overseas investors and the obstacles that investors have to encounter when they come to a new place with new cultures and also new laws. And also I am a real estate investor myself. So from from, from a business perspective, and also with the legal perspective, I feel that I could assist clients better with with both the business and the legal perspectives.

Jonathan Bench 3:57

Great, thanks. And for those of you who aren't aware, this is a this is the first of a three part series. The next part will be in one month where we'll talk about urban real estate. And then

Part Three will focus more on less urban, commercial and residential multifamily units probably hit on some of the strip malls as well as Steve talked about. So we hope that you enjoy today's presentation we have we have a chat function. So feel free to give us any questions. We'll try to keep tabs on that. We don't mind going out of order. We're planning on keeping this very conversational today. So let's let's kick it off with our first question gentleman, which is why invest in the real estate market in this in the US, Steve, I think that you were going to take point on that feel free and then similar, and we will add our comments as well.

Steve Chianglin 4:45

Yeah, yeah. Thank you, Jonathan. So why invest in real estate in the United States? Well, I think there are several reasons one of the one one very crucial reason is that the United States is has one of the strongest legal systems that protect property rights. And so that allows for predictability and security for investors. And also on top of that is that the United States has one of the largest real estate markets in the world. And so although there's a lot of ups and downs in the real estate market, overall, it's fairly stable and predictable. And so with that, you know, with a large market, there's a lot of buyers and sellers, there's a lot of transactions going on. And there is an established financial system that allows for buyers, to leverage to access to capital, they can borrow funds, and all of these legal systems are set up so that investors can understand the risks involved in their investment. And also, they could use that predictability to predict the growth of their investments. And lastly, I think, especially in this market, post pandemic, where a lot of the government governments in the world are, are printing money. I think real estate, as historically is used as a hedge for inflation. So when currencies devalue real estate, usually appreciates. And so I think those are some of the reasons why investing in real estate is very important at this stage in time.

Jonathan Bench 6:45

I think also from a foreign perspective, coming to the US, the real estate is typing the idea of the American dream, right, you can come in, buy real estate, find renters, put it to productive use, and ultimately you can, you can realize all that all that income, right, you realize those gains, and there are no barriers to doing that, even for foreign individuals are very low, compared to many countries that I studied. So I think that just in terms of certainty, I'm sure our audience here knows this. But it always is important, especially for those of us who are working with anyone from abroad, that real estate as you sensitive is certain it's a hedge, and doesn't go anywhere. And that makes it extremely valuable. And we see more now, even with the US immigration policies, meaning depending on the administration, meaning one way or the other, there's still a great influx of talented people who have had done well in their home countries who want to come to the US we want to establish a foothold, even if it's for for the next generation to do so. So it continues to to grow, I think Simon could probably tell us about the square footage, the per per the price per square foot in New York, it probably hasn't been affected much outside the pandemic, I would imagine. So there there are certain areas that are just very hard. And also there's I think there's a lot of data available as well, right in the US, part of making the market valuable is is being able to access those resources, you know, whether through your team that we'll be talking about, or just through your own internet searches, and really getting a good grasp for for which markets are heating up and why and and where they everyone predicts that they will go. So I think those are all valuable, valuable parts of why us real estate tends to be very attractive to investors. Simon.

Simon Malinowski 8:40

The only thing I would add is that you kind of have to balance the fact that there's a kind of on on the lower end downside, and it's not a very deep downside. And there's a lot of upside if you surround yourself with the right people, and you know, the potential for really capitalizing on an investment in the US real estate market. And if you invest in the right places, and you invest in the right ways, is is really what makes it both as safe but also a very potentially lucrative investment vehicle. And I think that that's really what's very appealing. New York specifically for lots of foreign investors because you come to a market that stable, absent a really catastrophic financial event like the housing crisis in in the late 2010s. or excuse me, the late 2000s. I mean, even Jonathan to your point, post COVID. We had a few months where things were slow and things weren't trading very much. But now the markets rebounded completely. And we were just speaking to a client earlier this week that setting records for price per square footage in Brooklyn. And officially that endemic in New York ended three weeks ago. And we're ready now chasing highs again. And so I think when when you look at the balance between the fact that it is very rare for the markets to appreciate significantly, versus the possibility for pretty high returns on investment, and it just makes a lot of sense for lots of foreign investors.

Jonathan Bench 10:26

That's great. So let's switch to talking about the team tomorrow, we're going to kick that off, who if you're a foreign investor coming into the US thinking, you know, who do I absolutely need on my team? Who is good to have? Who can I? Who do I need to engage? Now who is good to bring in later, I think, especially commenting on when when do you bring a lawyer advisor into your conversation? And is that before or after your banker? It's, these are all relevant questions.

Simon Malinowski 10:52

So in a lot of ways, I think this depends on what sort of investment you're looking into, you know, in the more stable, purchasing real estate to hold it, to, you know, potentially live in in a few months, a year, or even to rent out. And in this context, I'm really referring to either a single apartment, or a house. And it becomes a little bit more straightforward. At that point, really, the first point of contact is generally finding a good broker that you trust, and that you have a good rapport with, because for the most part, and if you're investing from internationally, you don't really know the ins and outs of the real estate market. across the US, there are dramatic differences in value from block to block or a mile mile difference, and not falling into the pitfalls of purchasing a property that has certain things wrong with it, or that really isn't what it's cracked up to be. And really, in large part depends on having a good real estate broker. And beyond that, an accountant and a banker. And that's kind of really secondary, because at that point, you're really taking the practical steps of figuring out how to bring the money into the country, how to set up an entity if you're purchasing it through an entity, which is what we advise for just about anyone who is not planning on living in the apartment themselves. And, and then basically making sure that whatever income is being derived from the from the property is being treated from the right perspective, from a tax perspective, and that that really is accountants and bankers. Now, I that. I think, you know, everyone's kind of wondering in that context, where the lawyers come in, and from a purely legal perspective, and the real estate transaction, if you're planning on living in, in whatever you're purchasing, you know, once you

get the guidance from an attorney on, on how to bring the money in, and a lot of that, again, comes from comes from accountants and bankers, the real estate transaction is usually pretty straightforward. That changes dramatically, when you're investing in real estate, from an actual investment perspective. And that may be purchasing property to develop. And by that, I mean, either renovate the property and rent it out, or renovate it and sell it or undertake ground up construction, where you are actually going through the process of buying either a building or a piece of land, demolishing the building, and then building something literally from the ground up. And in that context, is really, for most people, finding an attorney to get navigate you through that process is really the most critical part. And, and, you know, brokers remain very important because they help identify valuable land opportunities that exist because they're the ones who have their feet on the ground and know who's interested in selling when, and when there are dips in the market, or when there's a particular seller who has a particular reason why they need to sell, which gives you good value. But once you're really talking about the development process, you start looping in so many issues that affect the investment. And without having local institutional knowledge of the pitfalls of the particular market. You're really at a loss and you've already set yourself up in many ways to fail because there's so many issues that are inherent to real estate investment. And so like a good example It is kind of walking through what it looks like when you decide that you're going to purchase a piece of property to build. And I'll use New York as an example, because it's what I'm familiar with. But, you know, once you've identified a piece of property that you want to invest and build, you need to worry about one, financing unless you're buying all cash, but for the most part, people aren't buying all cash. So obtaining financing from a lender and making sure that the loan terms are something that you're comfortable with. And a lot of times in the real estate investment context, lending is broken up into two parts, there's the acquisition financing, which is the money to actually buy the land. But then there's also the construction financing, which is to pay for the construction of the building. And oftentimes, the acquisition financing is refinanced upon the completion of the construction. And there are all sorts of very sophisticated terms in terms of when the construction lender is allowed to release money to you. And so, you know, very quickly, it becomes a complicated process. And from the construction perspective, and every jurisdiction in the US has their own building codes. And there are there are contractors in those markets who really, predominantly work only in those markets. And so navigating that process, finding a contractor that you're comfortable with who has the right experience, but then also entering into a contract that protects the investment itself, because even minimal delays in the construction process can become very costly for real estate investors. Because in most cases, as I mentioned, you're paying for the financing. And so every day that the project takes before you're able to either sell or refinance is basically more money that's being lost from your bottom line. And so you know, as you can tell it very quickly, it becomes a very complicated process with lots of moving parts. and building a team around you that you're comfortable with who gives good advice, both holistically, but also from the very jurisdictional specific issues that arise as part of the process is critical to having potential success in the investment as a whole. And one, one other kind of part of the team that I think is really important, in terms of mentioning, and this, again, is really not necessarily specific, but particularly integral, when you're developing prop property yourself is finding a really good insurance broker, who will walk you through the process, who will walk you through the terms of your policy, and make sure that there aren't any gaps or exclusions that are really going to be problematic, because, as the three of us know, as most of the people who are participants on this webinar, now, we have a pretty litigious

country, and people are pretty quick to pull the trigger for filing a lawsuit, be it for a contract issue. But more so for personal injury or labor law issues and labor law in the real estate context. In New York specifically has to do with an when an A contractors, employees injured on the job site. And those litigations can be incredibly expensive if you don't have an insurance policy in place to protect you as the investor. And so having a broker who is one, and knowledgeable and familiar with the issues that are endemic to real estate, and construction, again, it's really important to making sure that the investment as a whole is protected, because without that one lawsuit could go from could turn a very successful and lucrative project into a loss immediately. And so actually, you know, the real estate broker part of it, I think, is a really good segue into talking about, you know, the right and the good ways of identifying and valuing potential properties and identifying potential properties. And I know we're kind of jumping to the next subject. So I'm quickly going to pause to see if either the two of you have any further input on forming the right advisory team and any comments on that or any any kind of individuals or professionals that you think I may have missed.

Jonathan Bench 19:59

Steve, you and I were talking about accountants before we started the webinar and you want to touch a little bit on that, especially as relates to, to countries that may or may not have an estate tax treaty with the US.

Steve Chianglin 20:12

Sure, yeah. So one issue that foreign investors definitely want to be aware of before they invest in real estate in the US is the potential estate tax issues. There are limits a number of countries that have a gift and estate tax treaty with the United States. A lot of my clients are from Asia, from China, Taiwan, Hong Kong, and these countries or these, they do not have a treaty with the United States. And so what usually happens, if there is no treaty, then the investor is considered if they don't have a permanent resident, see a green card or if they are not US citizens, then there if something were to go horribly wrong with their health, or if they were to pass, then their entire assets, real estate assets in the United States above $60,000, will be taxed at 40%. And that will be the that's the the general rule of estate taxes for foreigners. And so this could be a pretty, pretty huge tax hit to to investors who are not aware of the tax laws in the United States. And if the investors know about these issues, there's actually quite a number of ways that I usually work with tax advisers to plan around it, to try to set up different entity structures so that if somebody were to pass there, we could minimize the potential impact of the estate taxes.

Jonathan Bench 22:09

I think it's interesting, just for everyone's information, I found it interesting. We're preparing for this, um, there are dozens of countries that the US has income tax treaties with. But the list of estate and gift tax, as those two countries that we have an estate or gift tax treaty with is only about 15. So I'm going to list these quickly because this may be some of our some of our attendees today. So Australia, Austria, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, South Africa, Switzerland, and the United Kingdom. That's it. And I was surprised when Steve and I were discussing this and how few countries there were including many allies, you know, countries that the US has very friendly economic relations with. And for whatever reason, we do not have a state or gift tax treaties in place with them. So let's I

think that fits you know, I think one question maybe that we could talk about for a minute is, which of these key members of our team will be able to be compensated out of the out of the financing, if an investor can get financing from usually from other say, a more traditional bank, which have the you know, the architects, the accountants, the the attorneys, the the insurance, which of those expenses will be able to be wrapped into one of the loans that they can get versus needing to come out of pocket with either you comment on that?

Simon Malinowski 23:38

Well, typically speaking, the acquisition financing is really used for the acquisition of the property, right. And so when you're buying the property itself, there'll be amount that you have to put down pursuant to the contract. And the amount that the bank is willing to provide for the balance of the purchase price is really tied to the purchase price. And so from a traditional, you're going to a bank to get money to purchase from the property itself. Those funds are going to be used solely for the acquisition of the property. And the reason for that is really straightforward. And the only reason that the banks are willing to enter into those loans because they're collateralized by the property, which means that the bank and the banks loan underwriters are comfortable with the bank, that worst case scenario. If the borrower fails to make payments pursuant to the loan, that they will be able to foreclose on that loan and sell the property and get relatively close to 100 cents on the dollar in terms of what they've loaned to you. That dynamic changes dramatically if you're using you know 20% of the money that's being loaned to you for, for kind of ancillary costs. Now, from a construction loan perspective, you know, a lot of that is really negotiated with the lenders directly. And when you're negotiating that process, you know, there are amounts that can be negotiated, that are used for what are known as kind of pre construction costs, evaluating the property that design and construction, there's also lots of ways of structuring the contract with the contractor themselves, in terms of how the project actually goes. But in terms of having the funding for, I'll call it kind of the ancillary services. And by that, I mean, not construction itself, and not acquisition itself. And now, it is doable, for the most part, most of our clients, as we see it, are paying for those ancillary costs out of pocket, and really just having those two separate buckets for the project. So acquisition, and then construction.

Jonathan Bench 26:16

So let's turn Oh, Steve, go ahead.

Steve Chianglin 26:18

If you guys saw yeah, just gonna add an anecdote, I've been hearing from clients and also bankers that for for investors who are investing real estate these days, the down payment requirement, if they're seeking access to capital, is anywhere from, it's gonna be over 20% to even 40% these days of the down that is required. So that's just a general poke ballpark for, for our listeners who are interested in in seeking financing from us lenders.

Jonathan Bench 26:59

So let's turn now to the next question, which is, if you're identifying and valuing potential properties, you're coming from abroad, you don't have a network here, you don't have an agent yet? Where do you suggest that investors start when they're trying to determine what kind of real estate to invest in and where, and then ultimately, how to find the right property.

Simon Malinowski 27:23

So I, again, think that that kind of falls into two buckets. And it really depends on what sort of investment you're interested in pursuing, you know, from a more complex investing to develop real estate or renovate real estate, you know, they're, they're really one of two avenues. And one of which is finding, again, a broker who really knows the market well, and who can help identify real estate that has good value. And that is, it is going to be able to achieve your goals as an investment. And really kind of set things up in such a way that you have the opportunity for long term success. The other avenue and, and you know, I think that we'll touch on this a little bit later, is finding good local people to partner with. And the joint venture option. And that's when I mean partnership, I generally refer to joint ventures is this is really what we see a lot up in New York, which is a joint venture where there's a general partner who's really responsible for the hands on day to day parts of the development process. And then the investment portion of it, who's the limited partner, and oftentimes, this is where the foreign investment buys. And they're, they've generally get very good returns on their investment, assuming that they partnered with the right people. But if you have the right joint venture, you find the right really real estate developer from a local perspective to partner with, they will already have a very good handle on good investment opportunities, good areas where you're on the right side of the real estate curve, where property values will increase where for your specific development purpose, be it rental properties or condo properties, that you're in a good place to do it, but then also really have familiarity with the development process in the jurisdiction. And you know, in in the let's call it the Seattle context, if you partner with someone who has experience developing buildings, In Seattle, they're familiar with their building process, the, you know, permitting process, the right people to contact for insurance and all of that. And a lot of the really complicated and tricky things that we talked about in terms of forming the right team are basically handled by your partner. And it's one of the reasons why lots of foreign investment is structured from a joint venture partnership perspective, oftentimes with many foreign investors, on the limited partner side of the joint venture, because a lot of the headaches in foreign investment are then handled by the partner that's responsible for the actual development process itself. And so, you know, one there, there are lots of real estate developers in the US who kind of put themselves out there for foreign investment, who demonstrate what their track record is and properties that they've invested in and developed. And it again, takes away a lot of the headache while also highlighting, and good value for potential investment properties.

From the I'm just going to buy this property come visit, use it as kind of like a second home in New York, we refer to it as a Pied-à-terre, in that, in that context, you're really relying heavily on a good real estate broker that you trust. Because at that point, really, it's just a question of finding someone who knows which properties are available. And you know, what the pressure points are for the negotiation for the seller. And and it's really, there's, there's no easier way of finding good value than finding a good broker who you trust.

Jonathan Bench 32:10

I often joke that broke need to find brokers who who know the market and who are also willing to put in the work for it. In the purely domestic real estate transactions, sometimes we get into situations where I tell the client that the broker is really not pulling its weight. But in an

international context, you're exactly right, someone where you have so much unknown about the market, it is the brokers job that you make them earn their percentage of the transaction, by helping you put together the right team. And so I think for the overseas investors there, their job is to find the right broker, and then to lean on that broker to do their job to earn that commission and to put together the right team, including connecting them with everyone, they need to know that that should be within well within the a good brokers wheelhouse.

Simon Malinowski 32:58

And, you know, to your point, when, when you're looking for really good investment properties from a real estate perspective, particularly in the development context, like you're not going to be able to go on, you know, streeteasy or Zillow, and find, you know, an A plus investment property right? At that point, there. It is, like really in line with what the market is. And you'll probably get good returns if it's a good market, and you just are in a position where you can hold it for a long period of time. And then it's an it's a good stable investment. But really like for the high upside high return on investments. It's the brokers who have an idea of what's not on the market, or what's in a neighborhood where you have a seller who has a particular issue, that's incentivizing them to sell at a discount, be it a a loan that's in default, or some sort of estate issue that it's kind of forcing them to sell it in kind of sub market prices. And it's just impossible to find that sort of information out unless your entire job is to find out that information. So even local real estate developers that we work with is a firm here in New York. And they rely heavily on brokers to find those sorts of deals because you just you don't find that sort of stuff out unless you're knocking on doors, like literally knocking on doors, or facilitating relationships in the neighborhood where you're kind of hearing these things, word of mouth, and all of a sudden now you've got an opportunity where you can invest in a property and make 10 20% on your investment. But that's just not the sort of thing that you find out by, you know, going on streeteasy and saying I want to buy an apartment in this neighborhood or house in this neighborhood because at that point you're at market rate.

Steve Chianglin 35:06

Yeah, to add to that, I think it yeah, it's extremely important to form long term relationships with these brokers to, as you begin to explore the relationships that you are, you're you're forming, I think you'll realize that some brokers may or may not have your best interest at heart. And so you always want to be aware of that. You want to find people who, whose interests are aligned with yours? And how do you figure that out? I think he's just knowing, being able to ask questions of them from them and and see whether that information that they give to you will allow you to be able to plan better for your real estate investment portfolio. And in addition to that, I think it's a lot of these brokers, a lot of them are very competent, and they would have a lot of resources available to you. Let's see, for example, if you're looking at, you know, a Seattle property that's multifamily and apartment building, and how do you determine the valuation of that property. And a good broker will be able to let you know that, hey, an apartment building down the street is has 10 units, and it's being sold at this price. And so with that information, you can also double check whether your investment, your investment in this potential apartment building, will be able to pencil out financially. So I think sometimes having I think, for brokers and also real estate investors, you want to form the long term relationship, so that you can go to these trusted advisors, and they can provide you with with additional information that you might not have, if you're just working with, you know, calling somebody else say, Hey, I'm

looking to buy something in work with a one time. And that's it. Right. So again, having having advisors is also trying to build a long term relationship with them.

Simon Malinowski 37:25

And, to Steve's point, you know, I, what, what we find often and I, you know, the trusted advisor relationship is really critically important from a foreign investment perspective, because, by definition, the majority of the time the investor is not actually in the jurisdiction where the property is zoned. And what we find often happens is that, you know, there's the first entrance into the market, where you kind of start learning, you make the investment new, started kind of forging relationships with people. And oftentimes, it's the first time that we are interacting with an investor, as the real estate attorney. And what ends up happening is, brokers all have different opportunities at different times, they know different things. And there's lots of different brokers who have different pieces of information, what we often see happen is that our relationship with the foreign invest investor kind of grows over from deal to deal, right from investment opportunity to investment opportunity, because we kind of take appoint role in coordinating potential between the different portions of the team, because, as the attorney, we have our hand in every different part of the investment, from the acquisition, through the financing through the construction, ultimately, whatever the end product is, if it's a commercial property, negotiating and drafting the lease agreement, or if it's the sales, it's the sale of the units, and so to Steve's point, and forging those sorts of long term relationships, really, particularly with attorneys, and I know that it's kind of a self promoting statement, but the reality is, is that we often see our clients come back to us over and over again for different transactions, but go to different vendors for different things based on what the project is, being a different broker or a different contractor. And kind of having that continuity from project to project from a representation perspective, is what makes the process a little bit easier. Every new round of investment, but also dealing with problems because the reality is is that inevitably In the real estate process in the United States, and it doesn't really matter what jurisdiction you're in, problems arise, right? And it's just kind of inevitable and not having that turn into a crisis where you're scrambling to find good advice on how to deal with that problem is really important to getting it solved quickly, efficiently ended with the best possible outcome.

Jonathan Bench 40:28

I think it always is fair to ask, When does the attorney come into play with and you've touched on that your your other advisors are not going to be able to advise you on the type of entity you want to own, own it in what jurisdiction you set up that entity. And something that I deal with quite frequently is, when you are pooling your money with another group, whether it's a domestic group or an international group, there are significant us laws and regulations that come into play. So depending on the role you're playing, if you are the one who is kind of leading your fund, and you are taking money from especially from investors within the US, as part of that fund, say you're bringing half a million dollars to the table, you not have friends or family or other investors, you know, who are in the United States who are going to be pooling money with you into a into a fund. And I say fun colloquially, because it may may or may not be an official fund may just be an investment vehicle that we refer to as a fund. There are us laws on the issuing of securities. And that's something that I deal with quite a bit with my companies who are taking money from abroad and and even within the US is deciding, going through the analysis of, of who is raising the money, what is the project? And what kind of disclosure

requirements Do we have to other investors, and also to the US state and federal regulators. So I'm going to talk about that for a few minutes. And we'll we'll probably go another five or six minutes, and then we'll delve into our q&a questions. We've had some come in. So while I'm speaking, I'll let Steve and Simon dig into those and see any that they want to answer. So on the issue of entity choice, generally you want to stay away from a corporation when you're investing in real estate, LLC is tend to be popular, and S corporations are not available for foreign investors. Partnerships are not used very often anymore, except in fun scenarios. And so you may be asked to invest or you may be forming with on the advice of your counsel, a an LLC or a limited partnership. As far as which state to set up your LLC and or your entity and most of the time, it is the state either where you will be based or if you're going to be abroad, it will probably be the state where the real estate is, is based for your first project. banking is also important. I have a lot of clients from abroad who asked me whether they need a US bank account when they're investing either individually or as an entity in the US. And I generally, as a rule, say, this depends on on your level of involvement. If you are just owning real estate and have your take title to the real estate, and then you have one good tenant who will be there who you can have that tenant, pay your by wire to your international bank account, you may not need a US bank account. You may have tax obligations, though, that you'll have to keep an eye on. And that's why we mentioned earlier that having a tax advisor to help you know how to deal with those rental payments as they come in. That is going to be critical. And it will matter of course whether your country has a income tax treaty in place with the US now on the issue of us securities, whenever any foreign national invests in in the United States, the the executive branch, which is the opposite of the President of United States, has oversight over that investment. This is something that's came up in the news, really in the last four or five years, the you probably heard this acronym. It's called CFIUS which is the Committee on Foreign investment in the US. And there have been some high profile investments, purchases from especially from China, but not exclusively from China that have been unwound. If you pay any attention lately to what happened with Tik Toc the whiplash of Tik Tocs back and forth under the Trump administration. Now to the Biden administration, we'll give you an example. They tend to be very high profile issues, examples that come up, but those are not exclusive. I have another client that I'm working with now we're undergoing a cepheus review. They are not a Chinese company. And we decided to put the transaction up for review, which will at the end, give us a safe harbor. So I want to back up a little bit because I'm throwing a lot at you. So the rule of thumb is that If you're a foreign investor, and you're investing in a US business or us real estate, you need to do a cepheus analysis to see whether that transaction should be submitted for review. You don't have to submit it for review. But at the end of the review, which will take between 30 and 45 days, you can get a safe harbor letter from the office of the president from the executive branch. It's really Treasury I believe that issues it that decides that says we will not take any action on your transaction later. And generally, this is this is rapid on the issue of national security. So let's say you want to buy real estate and real estate is nearby a US port or an airport, or nearby, a US military installation of some court or other kind of government office, there is a map that you can look at on the cepheus website, to look at your state and a lot of real estate agents. And bankers aren't going to know about this, but it's still relevant to your analysis. And a good attorney can help you walk through this in in half a day or a day, knowing all the all the pieces of your transaction. And then you as the investor need to decide whether or not you want to submit that transaction for review. So most of the time, it's not going to matter, right? If you're just buying residential real estate in, in nowhere, USA is not going to come up.

But there if you're investing in New York, if you're investing in the large swaths of Montana, and Colorado, large Western States, where entire counties are blocked off from investment by foreign, anybody who's foreign connected foreign entities, foreign individuals, and this is not limited to just ownership. If your group has owner quasi ownership rights in the property, then that also qualifies as ownership and something that should be reviewed. So it's part of the analysis, how to bring your investors in how you fit, you know how all the investors fit together, and especially whether you're bringing money in from US based investors, the US securities laws and CFIUS Review are two of the areas where I spend a lot of time with clients, reviewing how the deal is put together, just making sure that it's done the right way. And ultimately, hopefully sending it off with with a blessing saying we're in good shape, you can move forward, but this is not something your broker will will be able to engage in. It's not something your banker maybe even heard of. But it is certainly important in in your analysis of your of your real estate. Similar. Steve, do you have anything to add at this point? Or do you want to address any of the any of the q&a questions that have come in?

Simon Malinowski 47:44

Sure, I saw there was the question about the Supreme Court's decision on the CDC moratorium, and then also relatedly, the commercial recovery from COVID. From a CDC moratorium perspective, I'm not surprised by the decision. I think that considering the fact that we're a month out. It doesn't seem quite like an emergency. And so I'm not surprised that the Supreme Court has decided not to proceed and just for context for everyone. The CDC, which is the Center of Disease Control, issued its own moratorium on evictions federally, which prevents landlords from commencing eviction proceedings during the COVID emergency, which in most jurisdictions in the us right now has legally been declared over, although now with the new variants that are changed, but at least for the time being, technically speaking, legally speaking, most jurisdictions in the US COVID is is over. And there have there was a group of landlords that filed a lawsuit and basically saying that the CDC did not have governmental authority to unilaterally impose this eviction moratorium without basically the legislature and implementing the law. And currently, the CDC is moratorium will expire on July 31. In my view, I think that in most jurisdictions, a lot of the laws have really skewed very tenant friendly, and it is really, in a lot of ways harming the residential or the real estate market. And the reason being, I, like many people are very sensitive to the plight of people who have had issues paying rent, particularly during COVID. And historically, particularly in places like New York, there have been a number of bad actors from the landlord perspective who have done kind of untoward things in terms of their treatment of tenants. With that said, at this point, moratorium aside, it could take in New York City up to a year to evict someone from a rental apartment when they're not paying rent. And that's basically an entire year during which the landlord is unable to collect money on their property. And, you know, I know that lots of people say, Well, you know, developers are all rich and this and that, and, you know, Woe is me. But the reality is, is that a large number of real estate owners who are landlords in New York, are not large development companies. They're either family investments, or buildings that were purchased by small landlords who own maybe one or two buildings, where their rent their rental property is their income or their retirement. And the fact that the, we basically had a system in place for the last six months, but it's been a year, but really problematically, the last six months where tenants really haven't had to pay rent without the risk of being evicted, is potentially really damaging. And, you know, hopefully, that that, at the end of this month, that aligned and the eviction, moratorium all blend in and judges

will, will do the right thing and the fair thing, and they're going to be people who are in really difficult situations. And my experience has always been, particularly in New York, that judges act equitably. And if there's a legitimate and fair reason why someone hasn't been able to make rent payments, they handle it the right way. But their reality is that they're also people who are taking advantage of the situation. And, you know, my my hope is, is that the moratorium now that COVID has legally ended, particularly in New York, that evictions will be allowed to proceed and judges will will deal with each case on a case by case basis and deal with it fairly.

In terms of the commercial recovery from COVID. And that, that that's really interesting. And I think the three of us can kind of speak to this, because the question that everyone's trying to figure out is, do people start going back to the office, I think from all other perspectives, and there's a lot of pent up demand for the last 1516 months. As far as I know, restaurants are fall, people are traveling again. And everyone is really excited about living life. And so those portions like be it retail, be it, restaurants, been other kind of consumer sectors of the commercial real estate market, I think that the recovery is going to be really strong. From an office perspective, it's going to be interesting to see I think that lots of people are really reevaluating their office needs. I think that with the new generation, there's going to be a fair number of people who want to do a combination of remote and in person work, which means that for most landlords, office, landlords and for most businesses, real estate needs, from a size perspective are going to be smaller than they were historically, because of hotelling or other options. And it's really going to be interesting to see how that market develops. I know that New York there are a fair number of commercial developers who are considering converting their office space into either condos or rentals for residential purposes. There's certainly a lot of office space in New York. And it's it's a very creative and interesting way of dealing with the problem. And but we're all waiting to see how that shakes out.

Steve Chianglin 54:24

To add to Simon, points on COVID recovery on the commercial context. What I'm seeing here in Seattle, it's it's being bifurcated. But that means is on the on one hand, you have the eviction moratorium, that's that is that's still been in place. And it's actually been extended till the end of September, here in Seattle and Washington State and So there are clients, you know, there are landlords, small landlords that have not been paid rent for over a year now. And so I think some of these landlords are going to be in a terrible bind. And then on the other spectrum is the retail context. Depending on the location, some, what I'm seeing right now is that some landlords are actually raising rents for retail spaces. And I think part of that is because, as you know, real estate is very localized the adage of location, location, location, right? So if you buy, right, and if you're fortunate enough to buy in a location where a lot of businesses industry are coming in hiring, then you are protected somewhat. And so you know, the difference between Seattle and also the the outskirts or Seattle, you can see that it's starting to creep up, if not, if it's not already increasing in terms of the rent increases that are in place. But then at the other hand, if some landlords are just stuck with tenants who are unable to pay rent, so it's, it's a really interesting market. And I wonder what's going to happen in the next couple months or a year or so? Because you have this COVID variant that's coming out. But then at the same time, a lot of a lot of people are flush with capital, and they want to, people are very optimistic about some people are optimistic about the economy, and they're bullish about it. So I wonder what it's going to turn out to be.

Jonathan Bench 57:07

Looks like we're in our last minute, we had several questions come in that we're not going to have time to answer. So I'll tell the audience to stay tuned on our Harris Bricken blog, where we will, the three of us will divvy up some of these questions. We'll we'll blog. We'll put down the questions and give you some thoughts on on what we what we see. Of course we are. We are nonprofits, but we try to we try to do our best so we'll give you the input that we can and look forward to seeing all of you at the at the next version of this or to next month. Thanks very much.

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