Trio of industry experts dive into mechanic liens, opportunity zones & funds, bank loans at REIAC June breakfast program

Members of REIAC Southwest and their guests were treated to a trio of industry experts each touching on a specific market segment at the 2Q Breakfast Series June 6 at the CoStar offices.

The theme was emerging trends in real estate development, investment and technology. The panelists couldn't have been more diverse.

Cheri Brady, Vice President and Senior National Account Manager, National Services Division, First American Title Insurance Company, dove into the issue surrounding the mechanics lien and title insurance.

Byron Sarhangian, Attorney, Snell & Wilmer, discussed opportunity zones and opportunity funds and where they stand.

Gabe Potyondy, Executive Vice President and Managing Director of the West, BBVA Compass, closed out the discussion highlighting everything from bank loans to capital markets to the possibility of another recession.

>> Cheri Brady: Much has changed over the years when it comes to mechanics lien statutes and title insurance regulations, Brady said. Insuring in the face of broken priority is one of the topics upon which she touched.

A broken priority can occur when a general contractor starts to work on a project before a construction mortgage is recorded. This triggers the possibility of a mechanics lien being filed by the GC and by every subcontractor on the project.

"Back in the good old days, it was just an indemnity," Brady said. "Every jurisdiction has rules and regulations when it comes to the mechanics lien. In Arizona, even if pristine conditions exist (at the development site), a general contractor or subcontractor is still allowed to come up with a mechanics lien."

Everything goes back to the original site and the commencement of work – fencing, grading or portable restrooms.

"There are many title insurance considerations," she said. "The title company's duty is to offer coverage that protects the owner's rights and cover costs that arise during litigation."

>> **Byron Sarhangian:** Opportunity zones give investors tax advantages through opportunity funds, Sarhangian said. An opportunity zone is a designation created by the Tax Cuts and Jobs Act of 2017 allowing for certain investments in lower income areas to have tax advantages. The purpose of this program is to put capital to work that would otherwise be locked up due to the asset holder's desire to reduce or eliminate a capital gains tax.

On April 17 the U.S. Department of the Treasury released its second tranche of guidance regarding opportunity zones and opportunity funds.

"The second trance got very tax technical," Sarhangian said. "What we've seen so far is single asset funds continue to be the trend. There are groups that that doesn't work for. Entities such as Goldman Sachs can put together a fund to reduce or eliminate their own capital gains. They're captive funds; they have their preferred source of equity."

The proposed regulations cover rules that apply to investing in operating businesses, timeline rules for deploying capital, standards for developing vacant property or buildings that are not in use, and investing in opportunity zone projects on leased land.

"Right now, opportunity zones are in their infancy, but they have enjoyed partisan support," he said. "We will continue to see what happens."

>> Gabe Potyondy

On the lending side, Potyondy said transaction volume is down but not due to a lack of liquidity. The trend, he said is that a lot of capital providers are playing within in one another's space.

"Bank space, life companies, GSE's, debt funds … they're all getting aggressive," he said.

Bank loan portfolio growth has gone down year over year, Potyondy said. "Someone is biting into our market share and we think it is the debt funds who are now also getting into construction loans."

Multifamily and industrial growth sector is still the most sought after by the banks today, he added. However, there is still a healthy volume of term loans on stabilized office buildings.

“We’re still being cautious in regards to underwriting. Compression in spreads is still the name of the game.”

Asked if a recession is coming, Potyondy said, “it comes when there is group think on one side. It’s just something to spook people. They’re seeing this in stock market gyrations. The impetus for a recession? It’s consumers saying there should be a recession. They start pulling their money off the table.

“And who knows what’s going to happen in the upcoming elections. We’ll just try and ride that out.”