

# Building BLOCKS



John Klakamp

## Law and Order in Real Estate Leasing

by John Klakamp

Each month, Building Blocks brings you a Q&A session with a different industry expert to cover the latest news, advice and tips you can use when leasing, opening, renovating or building a restaurant.

This month I sat down to talk with Marc Rosendorf, a real estate consultant and attorney who works exclusively with clients in the retail and restaurant industries. A native Washingtonian, Marc hails from a family of entrepreneurs who owned retail stores dating back to the 1930s. He received his undergraduate degree at the University of Maryland and law degree at Catholic University.

Marc combined his knowledge of real estate and law to open his own consulting firm, and since has worked with small and large clients ranging from start-ups to national chains, including Five Guys, Mamma Lucia Restaurants, Robeks, The Greene Turtle, Edible Arrangements, Saladworks and Haagen-Dazs.



Marc Rosendorf

### Melting Pot of Services: A Recipe for Success

**Q:** *You offer both legal and real estate consulting services. What are some of the services for which clients most commonly come to you?*

**Rosendorf:** I frequently assist with site selection, negotiating letters of intent and leases. I want the lease to look as close as possible to how I would want the lease to be if I was personally signing it. I offer a very hands-on approach, coordinating with the full team of professionals including the design team, contractor and any other experts as appropriate.

**Q:** *What are your objectives for your clients?*

**Rosendorf:** One of my primary objectives is to ensure that the project is opened and operating before the first rent check is due, because if that doesn't happen the business starts on a negative. Also, I try to provide tenants with flexibility with future planning, whether that's giving them the option to expand their services, profit by selling the business eventually or have a successful exit strategy. The reality is most contracts give the landlord or owner sole discretion and I try to mitigate that for my clients.

**Q:** *What is different about your process that adds value to your clients?*

**Rosendorf:** I am there from the beginning to help clients with their initial package and continue to consult with them all the way through the start-up phase. I can coordinate all the experts they need to make their project successful, from design and construction to getting a liquor license. Also, I bring an attorney's perspective to real estate consulting, thinking years down the road to make sure you are protected for the life of your business and beyond. Finally, because I have existing relationships with owners and developers I can often help open doors for my clients.

### There's a Right Way ...

**Q:** *What is the first step a restaurateur should take when looking at a new location?*

**Rosendorf:** Before I let a client, particularly a start-up, begin the process with a developer or real estate owner, I work with them to develop a business plan including a menu and design plan. This can help an unknown restaurateur secure a favorable location, giving him or her a better chance for success.

**Q:** *Can you share any other best practices in real estate negotiation?*

**Rosendorf:** One big one is to bring together a team of experts very early on—as early as the letter of intent—to better manage your project. From there you can have



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your contractor look at the construction scope of your lease, have insurance professionals review lease provisions, have an attorney look at use clauses, etc. These are complex issues and the type of things that we don't want the clients to have to guess about when there are experts who can help.

## ... and a Wrong Way

### Q: On the flip side, what are some common mistakes you've seen?

**Rosendorf:** Permit protection and contractor selection are two key reasons why a business succeeds or fails. The concept of permit protection is a big one--trying to time your build-out and therefore first rent payment based on when the local government authority issues permits. It's important to find a reasonable compromise that doesn't take advantage of the property owner but rather manages the risk for the business owner which is beneficial in the long run to the property owner as well.

In terms of selecting a contractor, frequently a restaurant owner will go with lowest bid, but that is not necessarily the contractor who can successfully navigate the process to get the project open on time and at or near budget.

### Q: Can you give a specific example of another issue you've faced?

**Rosendorf:** I got a call from a restaurant owner yesterday who wanted to offer breakfast for the first time. When I looked at the lease, it was not definitive whether it required the landlord's consent or whether there were other restrictive covenants in place by other restaurants/retailers in the center. This is an example of how if a lease is not fully thought out and negotiated, there is the potential for adverse impact.

## Trends

### Q: What are you seeing in terms of trends in the market?

**Rosendorf:** In the current economy we are seeing a return to fundamentals. During the last real estate boom we were seeing expansion for the sake of expansion. For example, I worked on the lease-up of a Giant food-anchored center in Urbana, Md. several years ago. At that time, projections were for very rapid growth that would add thousands of new rooftops to that area. Builders, banks, lenders and businesses all bought into this despite the fact there were only 1,500 people living there at the time. So when growth stopped, businesses floundered and we are still working through the resulting vacancies. Now we are going back to less growth but more rational growth.

### Q: How do you ensure those fundamentals are in place?

**Rosendorf:** The business plan has to satisfy basic criteria to be successful – the market has to be the correct market with the correct population and real estate location.

### Q: Any final thoughts you'd like to share?

**Rosendorf:** You need to come equipped to a prospective transaction with the ability to negotiate the appropriate terms that will ensure success for your business. You'd be surprised how many successful business owners don't know this. Even experienced restaurant owners face these very complex issues that will have a significant impact on the future of these businesses. Questions can be directed to me at Rosendorf Group via e-mail: marc.rosendorf@gmail.com.



John Klakamp has more than 30 years experience in restaurant construction and is owner of Annapolis, MD-based Encore Construction ([www.encoreconstruction.net](http://www.encoreconstruction.net)), a firm that specializes in providing pre-construction, construction and project management services to the restaurant industry.

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