

GROUND RULES PODCAST TRANSCRIPT

EPISODE 5: NAVIGATING NEW YORK CITY BUREAUCRACY WITH MARK HERTZ

Editor's note: This version preserves the Q&A format and core substance of the conversation while lightly tightening for readability, correcting transcript artifacts, and maintaining the original conversational style.

David Shamshovich

Welcome, everyone, to another episode of Ground Rules. I'm here with Brenda Slochowsky, who is co-hosting with me today. Let's talk about the man of the hour, Mark Hertz of the Mark Hertz Group.

Brenda Slochowsky

It was exciting to hear about everything he does. He's very time-conscious, meticulous about deadlines, and intentional about how he spends his time. He also tells a great story about a building that collapsed while he was in Florida and how he immediately flew back. He is incredibly attentive to his clients.

David Shamshovich

Mark was very open about his background in real estate and his family, and we reminisced about my own days collecting cash rents for my parents. His background is full of war stories, and you can tell he genuinely loves what he does.

Brenda Slochowsky

I think everyone is going to enjoy hearing both of your backgrounds.

David Shamshovich

Every developer, owner, manager, lender, and lawyer in New York real estate eventually runs into the same wall: bureaucracy. Brenda and I definitely know about that.

Violations, permits, hearings, stop-work orders, open items that nobody can seem to close, and agency processes that don't always move the way the code book says they should.

Today's guest, Mark Hertz, built an entire career understanding that system. He founded the Mark Hertz Group in 1988 and has spent decades helping New York property owners and real estate professionals navigate violations, compliance issues, penalties, local laws, and the city agencies that shape what can actually happen on the ground. Mark, welcome to Ground Rules.

Mark Hertz

Thank you so much for the invitation.

EARLY ENTRIES INTO THE WORLD OF REAL ESTATE

David Shamshovich

My mom had a lot of buildings in South Brooklyn. I would go around collecting rent, and everybody paid cash. Sometimes you gave a receipt, sometimes you didn't. It was all loosey-goosey, like a small-time landlord. Was that your experience growing up, or did you have something more advanced?

Mark Hertz

My grandfather was in the fur business. He left the fur business and bought a few small buildings. From those few buildings, it grew until he sold his last building a few years before he passed away at 88.

My father was in the insurance and real estate business until he left insurance and went strictly into real estate. He owned office buildings in downtown Manhattan, a residential building on 57th Street, buildings he converted to co-ops in Manhattan and Brooklyn, an office building in East Orange, New Jersey, and a building in Hempstead, Long Island. He was all over the place.

David Shamshovich

Were you one of those kids, like I was, whose parents wanted them involved and made them do part of the work?

Mark Hertz

I loved going into the office and going with him to buildings. I loved learning how an elevator works and how a boiler works. Put ten people in an elevator. You have the counterweight and the cables. How does it all work? You have a water tower on the roof servicing the upper floors. How does that work? You have fifteen tubes in a boiler and one goes bad. How do they repair that one tube?

And a roof. How many layers can you put on before you have to rip it off and go back to the membrane? We still deal with that through HPD and the Alternative Enforcement Program. I had a large building in Brooklyn where replacing the roof back to the membrane would have cost about \$1.5 million. Because I negotiated with HPD, the owner installed a quality roofing layer with a 30-year manufacturer's guarantee for about \$750,000.

Brenda Slochowsky

Half price!

David Shamshovich

They got it on clearance. Nobody I know has an extra \$750,000 that they want to give to a roofer.

KNOWING THE GROUND RULES**David Shamshovich**

One reason you need someone like you is that if you don't have the information, you can't negotiate with the agency. Sometimes the agency itself may not know the applicable rule because the people negotiating with you may not be as experienced as you are. Has that been your experience?

Mark Hertz

That is 100 percent true. I had a building years ago that was a school and catering hall. Before that, it was an auto-body shop associated with a dealership. After the school and catering hall had a certificate of occupancy and had occupied the building for years, the Department of Buildings sent a letter saying, "We are canceling your C of O."

I went to the Building Department and said, "One moment. You wrote a book, and the book has rules." There were only two ways to cancel a certificate of occupancy: go to a court of law or go to the Board of Standards and Appeals. You cannot arbitrarily send a letter to ownership saying, "Your C of O is canceled."

The borough commissioner asked, "Can you show it to me?" I said, "Yes, here's chapter and verse." We went through a battle and worked it out. The location is still occupied by the school and catering hall. They didn't know the ground rules, and this was a borough commissioner.

I don't mean to throw the Building Department under the bus, but you have to know the rules we play by and how those rules operate in the trenches.

HOW THE BUSINESS BEGAN**David Shamshovich**

The 1980s and 1990s were a different time. Your family was investing in real estate, and you did some management yourself. Where did the idea for this business come from?

Mark Hertz

I am very big with dates. Details matter. I went to work with my father and brother in October 1984. In January 1989, I left. My brother and I each went our own way, and I entered property management with a partner who was a friend from high school. The partnership was good, but it was time to move on.

My office was on 47th Street between Ninth and Tenth Avenues. I walked block after block, asking, "What's wrong with this building? What's wrong with that building?" I saw violations becoming much more prevalent. I knew these things, so I said, "Why don't I go into it?"

Brenda Slochowsky

That is boots-on-the-ground research.

David Shamshovich

Hell's Kitchen in the mid-1980s was not as clean and Disney-like as it is now.

Mark Hertz

Exactly. If you see a sign hanging half on and half off a building, what happens with one strong wind?

How did Local Law 10 of 1980, the facade regulations, begin, then become Local Law 11 of 1998 and later FISP, the Facade Inspection and Safety Program? Tragedies happened. Bricks fell from buildings and people were killed. The laws changed.

Preventive maintenance saves problems and penalties. I've had clients face fines of \$400,000 or \$500,000 for failing to file required reports. Once bureaucracy begins, it usually grows. I read proposed and enacted legislation every week. If you don't stay current, you become yesterday's news.

THE EXPEDITER STEREOTYPE**David Shamshovich**

When I think of an expeditor, the stereotype that pops into my head is somebody saying, "I know a guy. I can move this through quickly." Why does that image exist, and how do you go against it?

Mark Hertz

People always ask, "How much do you give the city? How much do you pay the inspector?"

Years ago, I was close with a chief inspector who later had to resign. I once asked him, “How come you never asked me for anything?” He said, “Because I knew you’d never give it.” I considered that the biggest compliment.

It’s not mafioso. It’s legal. It’s understanding where to push, how far to push, and knowing the rules and regulations.

I started with violation expediting. Almost nobody focused exclusively on violations. Regular expeditors and some attorneys handled them from the corner of their desks. I focused on one thing: violations, violations, violations. Did I say violations?

David Shamshovich

I think you may have missed one.

FROM VIOLATIONS TO FOUR COMPANIES

David Shamshovich

Walk us through why somebody would approach you instead of handling a violation themselves.

Mark Hertz

One way I learned, besides reading, was going to agencies with a truckload of questions. They wouldn’t answer all of them at once. I kept coming back, being polite and considerate. You get much further with sugar than vinegar.

From there, we saw the need. Zelly Wiederman has been with me for 26 years. My daughter and son-in-law have been in the business for about 15 years. My son has been there for five. We are about 30 people across four companies.

Mark Hertz Company handles violations. Mark Hertz BILD, spelled B-I-L-D, handles regular expediting when someone wants to extend a building, build from the ground up, or close out open applications. Mark Hertz Associates handles compliance with local laws. Mark Hertz Enviro handles lead and mold issues.

Open applications come up constantly in refinancings and closings. People get as far as they need to go and never formally close the application. Then a buyer doesn’t want to inherit it, or the owner later wants to amend the building or obtain a new certificate of occupancy. At that point, old electrical, plumbing, elevator, and construction applications become an issue.

David Shamshovich

What does it mean to close an application, and why is it important?

Mark Hertz

There is a checklist. You need the required sign-offs, inspections, site survey, and proof that the building complies with applicable requirements, including ADA requirements where they apply.

If you later want to add two floors and obtain a new certificate of occupancy, you cannot do that with open violations or open applications. Banks care about them too.

We recently received a call about a building with an expired temporary certificate of occupancy from, drumroll, 1969.

David Shamshovich

Wow.

Mark Hertz

The lender asked, “Is this a problem?” Do I have five fingers on my hand? Of course it’s a problem.

David Shamshovich

If it expired, you don’t have a valid certificate of occupancy. You’re lending on a building that technically is not allowed to be occupied.

Mark Hertz

Exactly. The loan became contingent on resolving it. We will probably need a new filing that supersedes the 1969 filing because that old job is unlikely to be reinstated.

People drop the ball, collect their fee, and say hasta la vista. Then somebody else inherits the problem. You may plan to own a building forever, but nobody lives forever. Even if you leave it to your heirs, they will inherit the issue.

WHY OWNERS NEED AN EXPEDITER

David Shamshovich

Some owners think they can use a consultant, have the architect handle it, or do it themselves. They may get through the process, but they don’t know

what they're leaving on the table. Why do they need an expediter?

Mark Hertz

Why do you hire an accountant, architect, or doctor? Professionals know what they're doing, get it done right, and leave you time to focus on your work.

Someone like me knows how to navigate the rules and stay within them. We keep people from doing something foolish or illegal, and often do it in half the time it would take someone starting from scratch. It's the same reason you don't do your own tax return. You may miss a legal opportunity available to you.

HOW TECHNOLOGY CHANGED COMPLIANCE

David Shamshovich

How has the business evolved? What is different now?

Mark Hertz

Everyone carries a smartphone. City inspectors do too. An inspector may be headed to a scheduled appointment, see construction along the way, and immediately look up the building. Is there a permit? Is the work allowed? They know in seconds.

When I started, people could get away with more. They could skirt rules and think they had outsmarted the system. They hadn't. At some point, it catches up with them. The city can issue a work-without-a-permit violation for something done 15 years ago. Once the violation is issued, you have to prove the old work was legal.

Brenda Slochowsky

The agencies have become much more efficient at catching and tracking these issues.

Mark Hertz

Correct. Their efficiency in processing the paperwork is a separate issue.

THE CYCLE OF HPD AND FDNY VIOLATIONS

David Shamshovich

In affordable housing and mixed-income projects, owners may need to show there are no violations before obtaining a TCO or completing an HPD process. Violations become a circular bottleneck. They clear one, another is issued, and they cannot get out of the cycle. With FDNY, there can be plans, objections, and repeated submissions. The issue is often time, not the fine. What has been your experience?

Mark Hertz

You just sold my business for me. We focus on these issues from the center of our desk. Mark Hertz Enviro handles lead and mold. Mark Hertz BILD gets the job signed off. Mark Hertz Associates handles ongoing local-law compliance. Mark Hertz Company handles violations.

Years ago, I had to bring a 98-unit building down to zero HPD violations. Find me a building that size without one paint-and-plaster, smoke-detector, or similar violation. That is a job. But the challenge keeps me going.

David Shamshovich

A tenant may deny access, preventing an owner from correcting an HPD violation. Then an inspector comes in and may find more conditions. How do you solve that?

Mark Hertz

City agencies must write life-safety and habitability violations when they see them: peeling paint where a child lives, a missing smoke detector or carbon monoxide detector, or a missing window guard.

But if you speak to people with real respect, it often works. This applies to commissioners, inspectors, clerks, owners, and tenants. Treat people with respect, and you will usually receive respect in return.

Brenda Slochowsky

It's all about relationships.

Mark Hertz

Exactly. Landlords and managers get frustrated with difficult tenants, sometimes understandably. But how you treat people matters.

TITLE REPORTS AND OLD VIOLATION RECORDS

David Shamshovich

When we review a title report, there may be a notice of violation that nobody can find. Then you have to decipher old handwriting and determine what

the issue was. Why is it so complicated?

Mark Hertz

To you, it's complicated. To me, it's a walk in the park! I review title reports constantly.

If a copy of the violation is missing, that's another reason you need an expeditor. Some older violations may be administratively dismissible depending on their age and what happened afterward. Would an owner with one building, or even 75 buildings, necessarily know that?

Sometimes records require off-site retrieval. The city stored old records near JFK Airport before everything went to microfilm. I know when to tell a Department of Buildings employee, "This is probably off-site because of the date or type of violation."

The Bronx and Brooklyn offices moved and no longer retain the same storage. Manhattan still has some records, although it moved from 60 Hudson Street to 280 Broadway. Staten Island has records going back to Noah's flood because it has been in the same building forever.

Brenda Slochowsky

The fact that you know the off-site storage exists is a big deal. Do you work throughout the five boroughs or on Long Island too?

Mark Hertz

We are five-borough people. We stay in the city. The city keeps us busy, and we love the city.

MORE REGULATION AND MORE COMPLEXITY

David Shamshovich

What trend do you expect over the next few years?

Mark Hertz

More detailed laws and more compliance. Owners need to take the warranty of habitability and tenant complaints seriously because tenant complaints can bury you.

We have carbon monoxide and smoke-detector requirements, stove-knob protections, facade requirements, elevator and boiler inspections, gas-piping inspections, energy reporting, and many other local laws. The details keep growing.

David Shamshovich

We also see buildings with expiring tax exemptions and Article 11 issues. Violations can delay everything.

Mark Hertz

The city would love to remove a tax exemption in a heartbeat, especially on commercial buildings. They once focused mostly on Building Department violations. Now Fire Department violations matter too.

Brenda Slochowsky

FDNY violations can be among the most intricate to clear.

Mark Hertz

Nothing is hard. Everything is a challenge. We like the challenge.

THE SNOWBALL EFFECT FOR RENT-STABILIZED BUILDINGS

David Shamshovich

Some rent-stabilized buildings are under serious financial pressure after the 2019 rent laws. Violations are reissued and penalties increase, but the owner may not have enough income to complete the work. How do they get out of that hole?

Mark Hertz

You have to look at the end goal. The owner may need to clear the violations to secure a tax abatement, affordable housing benefit, refinancing, or another approval. You cannot focus on one tree when the issue is the whole forest.

If the end goal provides a meaningful benefit, you have to invest what is necessary to reach it. The goal is to prevent the problem from getting worse.

PREVENTIVE COMPLIANCE

David Shamshovich

Your work is often associated with problems after a violation is issued. How much do you do proactively?

Mark Hertz

That is Mark Hertz Associates. It handles compliance before the violation. Mark Hertz Company handles violations after they arise. Mark Hertz BILD helps build, extend, and properly sign off a job so it does not come back to bite you. Mark Hertz Enviro handles lead and mold compliance.

Our first goal is for clients to stay compliant and never come to us with violations. Reality says that will not always happen.

Brenda Slochowsky

You have the soup-to-nuts process: get the property clean and keep it clean.

Mark Hertz

One call and everything is handled.

David Shamshovich

I thought expeditors came in afterward to clean up the mess.

Mark Hertz

Think of a building physical. We can help identify and prevent a problem, and if something goes wrong, help the building recover. Full service.

THE BUILDING THAT COLLAPSED**David Shamshovich**

Have you ever been brought in and prevented, or nearly prevented, a serious disaster before a violation was issued?

Mark Hertz

Many times. I had a client with several stores in a building. He rented two adjacent stores to one tenant. I visited for another issue and saw that the tenant had removed a load-bearing wall.

What happens when you remove a load-bearing wall? The building may collapse.

At four o'clock in the morning, with tenants asleep on the floors above, the building imploded. Thank God everyone survived. I then had to help the owner through a problem I had warned could happen.

The landlord was happy because the two stores were rented, the tenant combined them, and the rent was being paid. But nobody focused on the bearing wall. The upper floors were lost. Today, I believe it is only a one-story building with the stores.

We saw it coming. You have to know what you're doing. If you operate haphazardly, by the seat of your pants, these things come back to bite you.

ECB, OATH, DOB, AND CERTIFYING CORRECTION**David Shamshovich**

Violations are one thing, but sometimes you have to go to court. What determines whether you have to attend a hearing, pay a penalty, fix the condition, or prove the correction?

Mark Hertz

The Environmental Control Board, or ECB, used to be its own agency. It later moved under OATH, the Office of Administrative Trials and Hearings.

An ECB or OATH violation carries a potential penalty. Some also require correction, particularly violations issued by the Department of Buildings and Fire Department. OATH does not issue the underlying violations. It adjudicates violations issued by various agencies.

There are also Department of Buildings violations with penalties for noncompliance with local laws: annual boiler inspections, annual and five-year elevator inspections, Local Law 152 gas inspections, energy requirements, benchmarking, and others.

David Shamshovich

Sometimes the same condition appears with a DOB number and an ECB number. Is that a double violation, or is ECB simply administering the DOB violation?

Mark Hertz

It can be both. An owner might fight an ECB violation at a hearing, while a separate DOB violation forces the owner to invite DOB back for an inspection.

With an ECB violation, you may have to attend the hearing and pay a penalty unless it is dismissed. You may also need to certify correction. If you use the wrong form, miss a required item, or fail to dot every I and cross every T, you can spend six months going back and forth. We submit what the agency is prepared to accept.

David Shamshovich

When you go to OATH, are you fighting the violation, seeking a lower penalty, or simply paying it?

Mark Hertz

Our first goal is dismissal. If we cannot get a dismissal, can we mitigate it? Can we move from a Class 1 to a Class 2 or Class 3 with a lower penalty? Can certain sections or items be dismissed?

I had a case involving a building used partly as a school and partly as a synagogue. A child entered a construction area and fell from the second or third floor. Thank God, the child only broke a foot. It could have been much worse.

The city wanted to take away the contractor's license, claiming he had not protected the site. But he had protected it and had date- and time-stamped photographs. We worked through OATH and saved his livelihood. Without the right process, he could have lost his career and everything he built.

And it is not a one-man shop. We have approximately 30 people who know how to work through these issues.

VIOLATIONS, TITLE, INSURANCE, AND LIENS**David Shamshovich**

People confuse violations and title issues because they can overlap. A violation is not necessarily a judgment or lien, but it can become a monetary judgment and then affect title. How do lenders and agencies look at that distinction?

Mark Hertz

Before title, consider insurance. If a 50-unit building has 250 HPD violations and is in the Alternative Enforcement Program, the Underlying Conditions Program, or the Certificate of No Harassment pilot program, the insurer will pay attention. Add lead and mold violations, and your pocketbook starts hurting.

I review numerous title reports every week, primarily Schedule B. An HPD lien is a monetary issue. A relocation lien may arise after a fire makes apartments uninhabitable and the city temporarily houses the tenants. The city pays first and bills the landlord back, often through the tax bill.

The same concept applies when the city makes an emergency repair, puts oil in the boiler, repairs an apartment, or fixes a window, elevator, or roof. The city says, "I laid out the money for you. Now repay me."

CLOSING**David Shamshovich**

Thank you for giving me all this information. These were questions I genuinely wanted to understand. We're attorneys, but this is not our bread and butter. When you don't do this every day, the process can feel like you're navigating blindfolded.

Mark Hertz

We get questions from attorneys, title companies, architects, engineers, other expeditors, owners, and managers. I love talking to people and working through these problems.

David Shamshovich

You were named Expediter of the Year by The Red Awards, which is very cool, just wanted to mention that. You've been a wonderful guest and brought so much information to the conversation. Thank you for coming in, Mark. We really appreciate it.

Mark Hertz

It's been a pleasure to be here.

David Shamshovich

Thanks for listening to Ground Rules. To stay in the loop on new episodes, subscribe wherever you get your podcasts. For more on the show and Belkin Burden Goldman LLP, (BBG), visit bbgllp.com.