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ON CONTRACTS
AND CONVEYANCES
OF REAL PROPERTY**

Seventh Edition

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Seventh Edition

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Milton R. Friedman

edited and revised by
James Charles Smith

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*To Father, Mother, Dorothy
and Alan*

—MILTON R. FRIEDMAN

About the Authors

MILTON R. FRIEDMAN was a well-respected New York real estate lawyer, scholar and author who passed away in late 1997 after completing work on the Sixth Edition of *Friedman on Contracts and Conveyances of Real Property*. He was 93 years old and continued his work on this treatise until his last day.

Mr. Friedman had been a partner in the New York City law firm of Parker, Duryee, Zunino, Malone and Carter, and was a member of the Connecticut and New York Bars for over fifty years. After graduation from Yale Law School, he served as law secretary to Judges Learned Hand and Thomas W. Swan of the United States Court of Appeals for the Second Circuit.

His treatise *Friedman on Leases* was originally published in 1974 and is now in its Fifth Edition. It is the leading legal work on the law of commercial real estate leasing. This treatise, *Friedman on Contracts and Conveyances of Real Property*, is considered a classic treatise on real property law. It was originally published in 1954.

Mr. Friedman lectured in many educational and professional forums, including the American Law Institute, New York University Law School, Practising Law Institute, Association of the Bar of the City of New York, New York State Bar Association, New York Chamber of Commerce and Industry, New York State Trial Lawyers Association, and other state and local bar associations.

He served as Chairman of the Committee on Real Property Law of the Association of the Bar of the City of New York, was a member of its Committee on State Legislation, Special Committee on Rent Control, and sat on the Advisory Committee—American Law Institute on *Restatement (Second) of Property (Landlord and Tenant)*.

Milton R. Friedman was husband of the late Dorothy Guiterman Friedman and is survived by his son and daughter-in-law, Alan and Carolyn, of New York City, and three granddaughters.

JAMES CHARLES SMITH is the John Byrd Martin Professor of Law at the University of Georgia, where he has taught since 1984. Professor Smith received his J.D. from the University of Texas School of Law in 1977. He served as Law Clerk for Judge Walter Ely, U.S. Court of Appeals for the Ninth Circuit, in Los Angeles, then practiced law for four years with the law firm of Baker Botts, in Houston, Texas, specializing in commercial real estate. In 1982, he left private practice to go into teaching. From 1982 to 1984 he taught at the Ohio State University College of Law.

He is author of four other books: *Property: Cases and Materials* (2004), *Real Estate Transactions* (2nd ed. 2002), *Federal Taxation of Real Estate* (2001), and *Neighboring Property Owners* (1988). He has written numerous articles dealing with property, taxation, and commercial law.

Milton R. Friedman's Preface to the Sixth Edition

This book was written by a practitioner for practitioners in the field of real estate conveyancing, with the aim of considering not only what one should know in this field but also what one should do or not do, and why.

Closing a title in effect carries out the terms of a prior contract of sale. This is not meant to imply that what follows the contract is merely mechanical or that one may coast in from this point with a minimum amount of technical competence. There is plenty of room here for practical experience, imagination, and a background of scholarship. But the contract makes the law of the case for the parties. It is their charter and, for one of them, perhaps a straitjacket. This is true where the contract has been thoroughly negotiated. It is equally true where the contract is in the form of a binder, torn off a broker's pad and signed at the seller's back door.

After the contract has been signed, the parties may have some questions. May the building on the property, which is occupied by three paying tenants, be legally occupied by more than two tenants? Has a street abutting the premises been legally opened? If not, what are the consequences? Do covenants or zoning restrictions prevent some use of the property contemplated by the buyer? Are the premises subject to easements, express or "obvious," or will the act of conveyance, by severing a common ownership, imply easements by grant or reservation in favor of either buyer or seller? Does an adjoining building encroach on the premises? Does a building on the premises encroach on adjoining property or on a street? Are the premises, described in the contract by reference to a lot on a map or to "the same premises conveyed by" a former deed, in fact the property the buyer expects to own? Is the spacious driveway the buyer observed entirely on the premises described in the contract? May the seller give a quitclaim deed or must he give covenants and warranties? Is the seller entitled to the liability of the vendee on the purchase money mortgage or of some straw man instead? Does an assignment of the interest of the vendee under the contract of sale carry with it any right

vested in the vendee to rescind or to sue for fraud? But by now the milk has been spilled.

All these and more must be contemplated while the contract is being negotiated, so that as little as possible may be left to hazard. It is unfortunate for one party to lose out because of some gap in his knowledge or marketability of title.

It is no less fortunate for the seller to be compelled to disgorge the proceeds of sale to which he is legitimately entitled because these proceeds were represented by a corporate check that the seller should not have accepted, as, for instance, the check of a corporation wholly owned by the buyer but unconnected with the purchase. Creditors of that corporation may properly object to the misuse of their debtor's funds. The practical and academic, then, are inextricably interwoven in this field. Both are the concern of this book.

Forms have been included in this text. The writer's attitude to such inclusion has experienced an ambivalent development. Using forms may be like playing with matches, but they may also offer a good checklist of matters to cover. Those included in form books are likely to have been snatched out of cases in which their interpretation and construction have been litigated—the last place to find an unassailable form. Forms herein are surrounded by a cocoon of explanation, with the hope that the good remains, and the bad is interred.

—MILTON R. FRIEDMAN

Preface to the Seventh Edition

I am honored to have the opportunity and privilege to continue Milton Friedman's treatise on contracts and conveyances of real property. Mr. Friedman's treatise, first published in 1954, is a classic that has benefited countless real property professionals throughout the nation. Years ago, when I practiced commercial real estate law in Texas, I consulted his treatise from time to time. I found then, as I do today, the work's mix of practical advice and deft exposition of governing principles to be highly impressive and helpful.

—JAMES CHARLES SMITH

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