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To Father, Mother, Dorothy
and Alan

—Milton R. Friedman

In loving memory of my parents,
Charles Tero Smith (1927–2004) and
Joyce Clara Poenisch Smith (1926–2008)

—James Charles Smith
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 Sixth 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 Chair of Law Emeritus at the University of Georgia, where he has taught since 1984. He graduated from Saint Olaf College in 1974 and from the University of Texas School of Law in 1977. He served as a judicial clerk for Judge Walter R. Ely of the U.S. Court of Appeals for the Ninth Circuit in Los Angeles, then practiced as an associate for four years with the firm of Baker Botts in Houston, Texas, specializing primarily in real estate finance, commercial sales of real estate, retail and office leasing, and the formation of real estate partnerships and joint ventures. From 1982 to 1984, he taught at the Ohio State University College of Law.

In addition to this treatise, he is the author of four other books: *Property: Cases and Materials* (with Profs. Larson and Nagle); *Real Estate Transactions: Problems, Cases, and Materials* (with Prof. Malloy); *Federal Taxation of Real Estate* (with Prof. Samansky); and *Neighboring Property Owners* (with Prof. Hand). He has written numerous articles and book chapters dealing with property, housing, real estate transactions, commercial law, and taxation. He is a Fellow of the American College of Real Estate Lawyers (ACREL) and Department Editor of the ABA magazine, *Probate & Property*. He has run the Boston Marathon five times.
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 Eighth Edition

Milton R. Friedman first published his treatise on *Contracts and Conveyance of Real Property* in 1954. His treatise promptly became a classic that has benefited countless real property professionals throughout the nation. Years ago, when I practiced commercial real estate law at Baker Botts in Houston, Texas, I consulted his treatise from time to time. I found then, as I do today, Mr. Friedman’s mix of practical advice and deft exposition of governing principles to be highly impressive and helpful.

Mr. Friedman continued work on his treatise through the Sixth Edition, published in 1998, the year after he passed away. I was honored to be extended the opportunity and privilege to continue his treatise by preparing supplements to the Sixth Edition, beginning in 1999. I then revised the treatise by preparing the Seventh Edition, published in 2005, followed by biannual supplements through spring 2017.

This Eighth Edition includes a major reorganization of the treatise, with the materials now divided among 38 chapters. I have replaced lengthy chapters and lengthy sections with shorter chapters and sections, with many more headings and subsections. In doing so, my objective is to make it easier for readers to locate the materials they want to study. By consulting the Table of Contents and the Index, readers should readily find relevant discussion of all the subjects covered in this treatise.

To the greatest extent possible, throughout the book I have preserved intact Mr. Friedman’s original text, including his colorful style and unique insights. Of course, with all of the new developments in real estate law and practice, I have added a great deal of new material, which naturally reflects my own analysis and advice. In a number of places were the law or practice has evolved significantly since Mr. Friedman’s original work, I have preserved his original analysis, with notes indicating it is his wording and placing it in context for the reader.

—JAMES CHARLES SMITH
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