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Sixth Edition

VOLUME 1

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MILTON R. FRIEDMAN
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Tribute to Milton R. Friedman

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*, originally published in 1954 and considered a classic treatise on real property law. He was ninety-three years old and continued his work on the treatise until his last day. *Friedman on Leases* was originally published in 1974. It is the leading legal work on the law of commercial real estate leasing.

Mr. Friedman was a partner in the New York City law firm of Parker, Duryee, Zunino, Malone & Carter, and was a member of the Connecticut and New York Bars. After graduation from Yale Law School, he served as law secretary to Judges Learned Hand and Thomas W. Swan of the U.S. Court of Appeals for the Second Circuit. A member of the bar for more than fifty years, Mr. Friedman wrote extensively for law reviews.

He 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 the husband of the late Dorothy Guiterman Friedman and father of the late Alan Friedman, and his daughter-in-law, Carolyn, and has three granddaughters, Wendy Sue Friedman, Kathryn Ann Friedman, and Amy Lee Friedman.

To Terry and Elias

—ANDREW R. BERMAN

About the Author

ANDREW R. BERMAN is Senior Vice-President and Associate General Counsel with Savills Studley in New York. He is a former real estate partner at Orrick Herrington, Akerman, and Sidley Austin. He also previously practiced at Wachtell Lipton and Davis Polk. In addition, Mr. Berman was a full-time Professor of Law and Chair of the Real Estate Department at New York Law School (NYLS) from 2002 to 2014. At NYLS, Mr. Berman founded, and served as the Director of, the Center for Real Estate Studies and the Institute for In-House Counsel. Since returning to private practice full time, Mr. Berman has continued his affiliation with NYLS and was appointed Distinguished Adjunct Professor of Law in real estate. He also continues to direct the Institute for In-House Counsel, and mentor current and former students.

Throughout his career, Mr. Berman has served on various committees of the American Bar Association, New York City and New York State Bar Associations, Urban Land Institute, and other professional organizations. He is a Fellow of the American College of Real Estate Lawyers (ACREL) and the American College of Mortgage Attorneys, and currently serves on the ACREL Leasing Committee and the Legal Opinion Committee. Mr. Berman is an alum of Princeton University and earned his J.D. from New York University School of Law, *cum laude*, *Order of the Coif*.

Mr. Berman has represented clients in a broad range of sophisticated real estate transactions, including commercial leasing, acquisitions and sales, secured and unsecured financings, and real estate development and construction projects. He has particular expertise representing owners and tenants in lease transactions of different asset classes, including office, retail, multifamily and industrial; and with ground leases, assignments, subleases and surrender/termination agreements. He also advises clients with complex issues involving lease administration, property management, and compliance with various federal, state and local regulations. Mr. Berman also advises on the development and redevelopment of mixed-use projects, construction projects, joint ventures, and strategic partnerships for public and private companies.

In addition to this Sixth Edition of *Friedman on Leases*, Mr. Berman has written and published numerous articles on real estate law in national law reviews and for business and law textbooks. He continues to speak regularly at conferences and seminars throughout the United States. Mr. Berman is frequently sought out to serve as an expert witness and consultant on major litigation cases and transactions, many of which involve commercial leasing issues.

Mr. Berman's unique experience as both a practitioner and scholar of real estate allows him to bridge the gap between the private practice and academic study of real estate law, a perspective that he has sought to reflect in this revised and new edition of the treatise.

About the Senior Contributing Editor

MARSHALL TRACHT is a professor at New York Law School (NYLS) who has written extensively in the areas of leasing, real estate finance and development, workouts, and bankruptcy. He is the author or co-author of numerous books on real estate leasing and finance, and a well-known casebook on real estate transactions, *Land Transfer & Finance: Cases and Materials* (6th ed. 2011) (with Quintin Johnstone and Curtis Berger). He has served as a member of the editorial board of *The Banking Law Journal*, and is editor of the monthly *Real Estate Law Report* published by Thomson. His articles have appeared in the *Journal of Bankruptcy Law*, *Cornell Law Review*, and *Vanderbilt Law Review*, among others, and he is a recipient of the Grant Gilmore Award for excellence in legal scholarship from the American College of Commercial Finance Lawyers.

Before going into academia, Professor Tracht practiced in the real estate and bankruptcy groups at Arnold & Porter LLP in Washington, D.C., and clerked for the Honorable S. Martin Teel, Jr., of the U.S. Bankruptcy Court for the District of Columbia. He holds his J.D. and M.B.A. degrees from the University of Pennsylvania School of Law and The Wharton School, and his B.A. from Yale University. Before joining NYLS in 2008, he was a tenured faculty member and then Vice Dean at the Hofstra University School of Law.

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Preface to the Sixth Edition

For over a generation now, Milton Friedman's treatise on leasing has served as the preeminent and definitive resource for lawyers and other professionals working in the field of real property. Like so many others, I first encountered this book as a first-year associate in real estate, and have turned to it again and again throughout my years of practice. Milton Friedman's clear insight about the law, practical advice, and elegant writing made this work stand out from its competitors. When I went on to teach real estate law, I not only continued to use *Friedman on Leases*, I also introduced my students to it as an essential handbook to the practice of law. I am honored that Practising Law Institute asked me to produce a major revision of one of their best-known reference works. I've done so, guided by the values of high-minded scholarship, accessibility, and practical utility that marked Milton Friedman's original work.

ANDREW R. BERMAN

February 2017

Foreword to the First Edition

This work had its genesis in 1945 when the writer was invited to contribute a monograph to the Practising Law Institute's General Practice series, a series intended to help lawyers returning from military service brush up their skills. The result was the writer's *Preparation of Leases*, which first appeared in 1946, a monograph of 67 pages, the last 11 of which consisted of a form of commercial lease, landlord-oriented, with deletions and additions to indicate the result of mock negotiations.

Without profound thought or analysis of any organizational scheme, *Preparation of Leases* commented on the topics appearing in a conventional lease, and in that order, *i.e.*, the Parties, the Premises, etc. Within a few months the first edition was exhausted, and a revised edition was published the same year. Successive and larger editions were published until the tenth edition in 1962. This new work has made little change in the organization of material in *Preparation of Leases*, despite an expansion that makes Chapter 7, Assignment, Subletting and Mortgaging of Leases,* longer than the entire monograph throughout its various editions. The general order of *Preparation of Leases* has been followed here. It would perhaps be more conventional to collect in one place all the material relating to the running of covenants, for instance, or to dwell at length on tenancies at will, but this would probably shatter much of any usefulness it may have for practicing lawyers. *Preparation of Leases* avoided references to historical background of the law of leases, though one need only scratch a lease to see its feudal forebears. This work includes some historical references, but only when relevant and essential to its purpose. Legal archaeology for its own sake has been avoided.

The preface to *Preparation of Leases* included the following:

A word on forms and formbooks is in order. It is customary to give reluctant approval to their use, inveigh against following them "slavishly" and warn against the pitfalls they offer.

* Chapter 7 is currently titled "Assignment, Subletting, and Mortgaging by Tenant."

It is entirely impractical to draft conditional limitations, condemnation and similar clauses without the help of good forms. Here one finds carefully worked-out, time-tested language, as well as a check against omissions. If slavery is involved, let the draftsman be the master. The scissors-and-paste method may assemble a good collection of clauses, and a good lease as well—if they are reconciled by the draftsman rather than a court. Prepared forms do offer pitfalls to the uninitiated; it is hoped that the following pages will be of some assistance in avoiding their danger.

This language may be repeated. But another thought may be added. Some form books cite the cases from which their forms were taken, if involvement in litigation gives them a cachet. The forms included here have, with rare exception, *not* been the subject of litigation. Whenever any of these forms needs construction by a court, it will be stricken from any future edition.

The writer is grateful to Lyn Oliensis who undertook the myriad of chores necessary to transform a manuscript into a book.

MILTON R. FRIEDMAN

1978