

2017

## Friedman on Leases (2017)

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### Recommended Citation

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# Friedman on Leases

*Sixth Edition*

by Andrew R. Berman

*Friedman on Leases* is widely regarded as the leading authority on commercial real estate leasing, recognized for its extensive and balanced coverage of tenant and landlord concerns. This new *Friedman on Leases, Sixth Edition* continues to deliver not only the foundational knowledge required by novice practitioners, but also analysis of and insight into the most current and relevant developments facing seasoned practitioners in the commercial real estate field. The author Andrew R. Berman is a real estate partner at Orrick, Herrington & Sutcliffe and a law professor at New York Law School, where he founded the Center for Real Estate Studies and the Institute for In-House Counsel. Mr. Berman's expertise in both practice and academia enable him to provide a broad perspective and insight that real estate professionals need in this rigorous and dynamic field.

Each volume of *Friedman on Leases, Sixth Edition* is being updated and released this year: Volume 1 (July 2017) and Volume 2 (November 2017). This initial installment of *Friedman on Leases, Sixth Edition* continues where the last cumulative supplement left off, focusing on **Volume 3, chapters 27–39**. With an emphasis on clarity, completeness, and incorporating the latest developments, chapters 27–39 have been revised and updated.

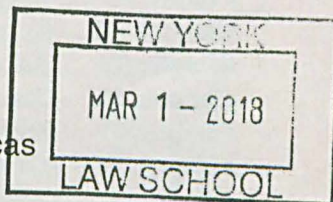
Highlights of this new edition include the following:

**Disparate Impact of Business Practices.** New discussion of discrimination through policies that have a disparate impact on a protected class. The topic is examined through the context of criminal background checks for residential tenants, which was addressed by HUD guidelines issued in 2016 (see section 27:8.1).

**Modification of the Lease.** The general rule is that if a lease is subject to the statute of frauds, a modification of that lease must also satisfy the statute. Discussion of **oral modification** explores possible exceptions to the general rule (see section 32:2). An **estoppel certificate** is not intended to modify the lease, but as discussion of several cases illustrates,

*(continued on reverse)*

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a lender or landlord may later argue that it had that effect (see section 32:4).

**Right to Visibility Easements for Signage.** Discussion expanded to include express provisions requiring tenant to acknowledge that it has no rights to any view or light, to prevent a window from being darkened or closed, or to claim a constructive eviction or right to an abatement; and provisions stating that landlord has the right to construct permanent signage on the exterior of the building, even if such signage blocks a tenant's view or light (see section 33:4).

**Guaranty of Lease.** New extensive discussion of "good guy" guaranties, which are drafted to address a tenant's failure to vacate the premises at the end of the lease term and/or a tenant's departure leaving the premises in unacceptable condition (see section 35:2.1). New sample forms added: **Form of Guaranty of Lease** (see Appendix 35A) and **Form of Good Guy Guaranty** (see Appendix 35B).

**Insurance.** In 2013, the standard ISO endorsements providing additional insured status were amended. Discussion of the effects of these new forms, including the new definition of "additional insured" and the form's use of the requirements of the lease not only to limit the policy limit applicable to coverage for the additional insured, but also the types of claims that are covered (see section 38:1).

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## ABOUT THE AUTHOR:

**Andrew R. Berman** is a partner in Orrick's international real estate practice group and a former partner at Sidley Austin. He also previously practiced at Wachtell, Lipton and Davis Polk. Prior to joining Orrick, 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*.

For more than 25 years, 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