Securities Law Handbook Series

Real Estate Investment Trusts Handbook

A Special Entity to Own and Operate Real Estate and Make and Hold Mortgages

2026-2027 Edition

by Peter M. Fass
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with contributions
from Ernst & Young LLP

(Issued December 2026)

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Mat #43386758

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ISBN: 979-8-350-24074-0

What's New for the 2026-2027 Edition of REAL ESTATE INVESTMENT TRUSTS HANDBOOK
A Special Entity to Own and Operate Real Estate And Make And Hold Mortgages

by Peter M. Fass, Michael E. Shaff and Donald B. Zief with contributions from Ernst & Young LLP

This 2026-2027 edition of the *Real Estate Investment Trusts Handbook* has been updated and revised with analysis of the latest developments affecting REITs. As part of the coverage of SEC rules affecting REITs, accounting considerations, state Blue Sky provisions, and federal and state tax aspects, this edition includes discussion and analysis of the following:

- Latest REIT figures, including i.) total rates of return for equity REITs versus the broader market through 2025; ii.) unsecured debt offerings; iii.) premium/discount to NAV by property type; iv.) leverage by REIT sector; v.) dividend yield spreads and payout ratios; vi.) mortgage REIT returns and market capitalization; vii.) REIT versus private real estate returns; viii.) CMBS issuance; ix.) REIT public offerings, index composition, and M&A and going private activity; and x.) equity REIT sector, healthcare REIT and REIT preferred stock data. §§ 1:1, 1:12, 1:17, 1:18, 1:20, 1:29, 1:35, 1:38 to 1:40, 1:58, 1:62, 1:68, 1:70, 1:71.
- REIT performance in the first half of 2026 and through July 2026, including property sector returns, price/FFO multiples by property type, and S&P 500 sector weights. §§ 1:14, 1:24, 1:43, 1:51, 1:52, 1:85.
- Commercial and multifamily mortgage originations rise 52% year-over-year in the first quarter of 2026. § 1:30.
- IRS proposes regulations to revoke reporting requirements for partnership related party basis adjustment transactions. § 1:15.
- SEC proposes rescission of climate-related disclosure rules. §§ 2:98, 3:22.
- SEC proposes Regulation E-Delivery to permit electronic delivery of investor communications without prior consent. § 2:220.
- SEC proposes optional semiannual reporting on new Form 10-S. § 3:40.
- FASB terminates debt classification simplification project. § 3:108.
- IRS grants relief for Section 163(j) real property trade or business elections. § 5:86.
- IRS rules income from sale of a zoning density bonus certificate is qualifying income for the 75% and 95% gross income tests. § 5:14.
- One Big Beautiful Bill Act significantly changes to qualified opportunity zone rules for 2027 and later years.
- Proposed amended regulations eliminate the domestic corporation look-through rule for domestically controlled REIT status; final Section 892 regulations provide relief from commercially controlled entity statutes. § 5:120.

To my wife Deborah Fass
daughter Olivia and granddaughter Penelope,
with all my love.

To my wife, Joan Zief,
and Rachel and Samuel Zief.

To my wife, Marilyn Shaff,
and my children, Eddie and Jordana,
whose understanding and support
I gratefully acknowledge.

About the Authors

Peter M. Fass is an optional service Partner in the New York office of the law firm of Proskauer Rose, LLP and was co-head of its Real Estate Capital Markets Group. He has written and lectured on a wide range of investment topics, including real estate investment trusts, real estate syndication, partnership structuring and tax shelters. Mr. Fass was a member of the NASD's Direct Participation Program and Real Estate Committee, a Supervising Council member of the Real Property, Probate & Trust Division, Chairman of the Real Estate Investment Committee of the Real Property, Probate & Trust Division, and a member of the Special Tax Shelter Committee of the Tax Section of the American Bar Association. He has served as a special consultant to the California Corporation Commissioner's Real Estate Advisory Committee. Mr. Fass is recognized in Chambers USA 2019 and US 2019 Legal 500 as a leader in his field. Mr. Fass holds a B.S. degree with honors in Economics from the University of Pennsylvania Wharton School of Finance and Commerce, a J.D. degree (cum laude) from the Harvard Law School, and an LL.M. degree in Taxation from New York University School of Law. He is a New York State Certified Public Accountant and is a recipient of the Haskins Award for Outstanding Achievement. He can be contacted at pfass@proskauer.com.

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Contributors from **Proskauer Rose LLP** include Michael Choate. Contributors from **Ernst & Young LLP** include Sarah Ralph, Mark Kirshenbaum and David Farhi. All are experts in REITs.

The authors are saddened by the passing of Les Loffman, a longtime colleague, who contributed regularly to this publication.

Preface

This *Handbook* is designed to be a reference tool for those interested in the federal income tax requirements and the securities law aspects concerning the real estate investment trust (REIT). While the primary audience for this *Handbook* is envisioned to be real estate owners and real estate operators, investment bankers and their attorneys and accountants, brokers, real estate developers, and potential investors should also find this work useful.

Several pieces of major tax legislation have affected REITs and the publicly traded real estate securities market, making REITs an attractive investment vehicle for publicly traded real estate. The provisions of the Tax Reform Act of 1986, which effectively eliminated tax shelters, shifted the focus of most real estate investments to economic returns, resulting in the REIT being an ideal investment vehicle to pass through to the small investor the economic benefits of investing in real estate on a large scale. The limitation of tax benefits and the consequent goal of tax sheltered cash flow has forced the sponsor of real estate investments to concentrate on current yield and/or long-term capital appreciation. As discussed in the Handbook, the REIT is a superb vehicle for these types of returns.

The REIT Modernization Act of 1999 permitted REITs to form taxable REIT subsidiaries (TRS) to engage in activities not permitted by REITs, thus allowing REITs to capture the economic benefits of such activities. Early statistics on TRS use and activities are discussed in Chapter 5. Along with other tax legislation, the REIT Improvement Act (enacted as part of the American Jobs Creation Act of 2004), and the REIT Investment and Diversification Act (enacted as part of the Housing and Economic Recovery Act of 2008), and the Protecting Americans from Tax Hikes Act of 2015 liberalized several REIT requirements and have had a profound effect on the ability of REITs to compete with non-REIT real property owners. Further, the Tax Cuts and Jobs Act of 2017 accorded REIT ordinary dividends the beneficial 20% "pass-through" deduction, that otherwise is only available to taxpayers with qualified business income. REITs are also permitted to elect to be a real property trade or business and thus escape the limitation on the deduction for business interest. These Acts and their effect on REITs are further discussed in the taxation Chapters 5, 6 and 7.

For a real estate investment vehicle that is to be publicly traded, a REIT is generally a better alternative than a publicly traded partnership largely because of the tax considerations facing tax-exempt and foreign investors; these entities are some of the major investors in publicly offered REIT and publicly offered real estate limited partnerships. Appendices are included which describe the NASAA statement of policy regarding REITs (Appendix A), the California rule for REITs (Appendix C), and a suggested initial REIT Public Offering Due Diligence Request (Appendix D). Also, Appendix 5A at the end of Chapter 5 identifies IRS private letter rulings which address the services REITs can offer to tenants, while Appendix 5B lists provisions of REIT laws adopted by non-U.S. countries. Appendix 6A at the end of Chapter 6 addresses state tax provisions regarding the allowance of the dividends paid deduction for REITs. Finally, the Table of Laws and Rules refers to sections of the text that discuss various securities and tax acts, regulations, releases and rulings relating to REITs.

Real estate investment trusts have had a varied (and bloodied) history. The *Handbook* discusses the history of REITs (including the dramatic decline in late 2008 and early 2009 and the significant recovery in late 2009 and 2010) and the problems faced by the REIT industry in the early and mid-1970's. The decline of the

REIT, its resurgence in the form of the finite life REIT, the equity REIT boom in the mid-1990's and the emergence of the UPREIT as a method to defer taxation for sponsors who contribute appreciated property and the inclusion of REITs in the S&P Indices including the S&P 500 in October 2001, are also discussed in depth in the *Handbook*. The Handbook discusses the issues involved in a blind pool non-traded REIT offering filed with the SEC and various state regulatory authorities, including a discussion of the performance measure, Modified Funds From Operations. The *Handbook* also discusses the various valuation methods for publicly traded REIT securities, the issues in using Funds From Operations and Adjusted Funds From Operations as a measure of a REIT's peformance and various thoughts of industry professionals regarding the future of the REIT.

Recently there have been several transactions in which operating companies that own real estate have elected REIT status or have spun off their real estate holdings into a separate entity that then elects to be treated as a REIT. In addition, the IRS has finalized regulations that at once codify and expand the definition of real property for REIT purposes, thus allowing heretofore non-traditional real property assets to qualify as real property. These developments are discussed in Chapter 5 in Section 5:58, "Non-core REITs."

There is an extensive discussion of the regulatory aspects of real estate investment trust offerings, including federal and state requirements. The accounting issues unique to real estate and REITs is dealt with in Chapter 3. The authors have had extensive experience with REITs, which has been incorporated throughout the text of the *Handbook*.

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