



AI Is Changing The Real Estate Industry. How Will It Impact Your Business?

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As we stand on the cusp of transformation in the commercial real estate industry, one cannot help but recall the sage words: “With great power comes great responsibility.” In an era marked by technological advancements occurring at a blistering pace, the real estate industry (commercial, industrial, residential, office, hotel and every other class of real estate) stands on the brink of transformation and the seemingly limitless promise and power of generative artificial intelligence (AI) looms large as both a disruptor and a savior. There is no ignoring it, just like virtually every other industry, the real estate industry is changing rapidly through the use of AI, and if you aren’t adapting your business to account for those changes, you are putting your business at significant risk. Traditionally, change in the commercial real estate industry has been akin having an oil tanker make a 180-degree turn - slow, measured, laborious and infrequent. The changes that have been brought upon by AI are more like making a 180-degree turn in a Ferrari - fast, loose, simple and frequent. However, these competitive and rapid shifts, while alluring, come with increased risks and the need to proactively manage those risks. The questions on everyone’s mind are: (i) Can AI really predict the future success of a project, (ii) how trustworthy is AI, (iii) how is AI going to change my business and (iv) what do I need to be worried about? Every day, public and private organizations are working towards answering those questions, not only developing reliable tools, but regulating the use of those tools to insure an even playing field.

Every Aspect of Real Estate Is Impacted:

Brokerage/Marketing/Investing - AI is already changing the brokerage sector, where AI is already reshaping how properties are marketed and identified for clients. AI-powered platforms are already introducing new tools which promise to help brokers reshape the way properties are marketed and identified for clients. Beyond mere marketing prowess, AI algorithms also hold the potential to analyze investment criteria, matching investment opportunities, business plans, and risk tolerances, whether for conservative pension funds or risk-tolerant venture capitalists.

Underwriting/Due Diligence - The underwriting process, a cornerstone of commercial real estate investment and finance, also stands to benefit immensely from AI integration. By synthesizing multifaceted data points ranging from tenant and income information to environmental risks, AI holds the potential to minimize human error, enhancing the likelihood of sound underwriting and investment decisions. Simultaneously, comprehensive due diligence analysis, imperative for mitigating risks inherent in real estate transactions, can be foreseeably streamlined with AI-driven solutions. By automating reviews of critical documents from rent rolls, leases, and property contracts to title reports, surveys, and environmental reports, AI models will increasingly empower businesses and legal teams to navigate complex transactions with far greater speed and accuracy than ever before.

Regulatory Compliance - For entities subject to regulatory oversight, including REITs, banks, and other financial institutions, compliance is paramount, not to mention the bane of many a real estate professional's existence. AI offers a potential lifeline to compliance teams, streamlining the arduous task of monitoring and managing the intersection of real estate investment, ownership, and operation with governmental and quasi-governmental regulations. By automating compliance procedures, it is possible for AI to not only save time but also ensure adherence to regulatory frameworks, safeguarding against potential legal pitfalls.

Development/Management - Real estate developers stand to reap substantial benefits from AI's integration across the development lifecycle. Platforms are being developed that claim to provide real-time insights on design, cost, and constructability, empowering developers to optimize project feasibility and accelerate delivery timelines. Similarly, AI's potential extends beyond transactional phases to property and portfolio management, where automation promises to streamline tasks ranging from facilities management and collection of rent to financial reporting. By harnessing AI-driven automation, asset managers can look forward to optimized operational efficiency, enhanced tenant experiences, and greater returns on investment.

Transaction Documents and Closings - The documentation phase of real estate transactions, and closing of real estate transactions, are poised for a seismic shift as large compilations of data are harnessed to train generative AI engines (a frightening thought for some attorneys). By leveraging a company's historical deal data and written policy positions, it is foreseeable that AI will possess the sophistication to facilitate the drafting and negotiation of transaction documents with precise adherence to given parameters and with unprecedented efficiency and accuracy, and then quickly and efficiently going through all of the necessary steps to proceed with a closing. However, as discussed in greater detail in [this](#) article, companies need to be very careful about the use of historical data, as the ownership and use of such data has been subject to much scrutiny. Before training any AI engines, an attorney should be consulted regarding the use of such data, as there have already been examples of companies spending millions on developing AI tools, only to have to unwind them when it has been discovered that the AI engines were trained on data that the companies didn't own. As discussed further below, no matter what the newest, shiniest AI platform promises, nothing can, nor should, replace the experience and judgment of seasoned business and legal professionals in reviewing, analyzing, scrutinizing and, yes, correcting, the work product of any AI platform.

Navigating Legal and Business Risks:

While the potential benefits of AI in commercial real estate are vast, they are not without accompanying legal and business risks. As business and legal professionals embark on this transformative journey, it's imperative to tread carefully, mindful of the legal and ethical considerations inherent in AI adoption.

One of the foremost concerns surrounding AI adoption is security. With the digitization of sensitive data and the reliance on AI-driven analyses, the risk of data breaches and cyberattacks looms large. As commercial real estate transactions involve vast sums of money and highly confidential information, ensuring robust cybersecurity measures is paramount. Professionals must be fully informed of the terms and conditions of AI platforms they employ, both internally and externally, and, moreover, invest in and develop secure systems and protocols to safeguard against potential threats, mitigating the risk of data breaches, inadvertent company information disclosures and protecting client confidentiality. Further, as discussed [here](#), companies need to ensure that they have clear and unambiguous AI policies and procedures in place for their employees. The draw of using public AI tools (like ChatGPT) to accomplish tasks quickly is strong, and employers without strict and clear policies in place with respect to the use of these tools are at risk of putting their companies and their clients at significant risk.

Another critical consideration is the accuracy and reliability of AI-generated analyses. While AI platforms hold the promise of streamlining processes and providing valuable insights, their effectiveness is contingent upon the quality of the data they are trained on. Inaccurate or biased data can lead to flawed analyses, potentially resulting in costly errors and misinformed decisions. This is why it is paramount that companies understand the tools that are being used, how those tools have been developed, what information is being used to train those tools and, almost as

important, what information is being omitted from the training of those tools. As such, all attorneys and business professionals must exercise due diligence in vetting AI platforms and engines, and validating their outputs, ensuring that the insights they provide are accurate, reliable, legally sound, and free from bias.

Build vs. Buy – Either Way There are Unique Legal Considerations

Whether you use third party AI tools, fine tune third party models or build your own AI tools, there are unique legal considerations that you must consider. For example, if you use third party tools, you may still be liable for any issues with the output (e.g., inaccuracy, bias, infringement, or illegal activity). To manage these risks, it is important to conduct AI-focused vendor diligence. This includes considerations beyond the traditional vendor diligence companies conduct when adopting third party technology. If you fine tune third party models or build your own AI, you need to ensure that you have development policies that will minimize legal risks. This includes ensuring the right to use the training data, ensuring legal compliance and employing responsible AI development processes. See [Responsible AI – Everyone is Talking About it But What Is It?](#)

How to Get Started

The range of legal issues with AI and the need to manage those risks may seem daunting but there is a proven process to tackle these issues. Companies looking to adopt AI should take the following steps. First, develop an AI governance committee. This should include representatives from different parts of the company to ensure relevant stakeholders are included. Next, it is critical that the committee members receive sufficient training to understand the legal issues. It is difficult to make informed decisions without this understanding. Due to the rapidly changing legal landscape, ongoing training is necessary. Then, the committee should develop the AI policies based on the role the company will play with AI (e.g., build vs. buy, etc.) as discussed in Why Companies Need AI Legal Training and Must Develop AI Policies as noted above.

Sheppard Mullin: Leading the Way

In navigating the complexities of AI adoption, legal guidance is indispensable. Law Firms like Sheppard Mullin are at the vanguard of this movement, offering invaluable expertise in understanding and managing the legal risks associated with the integration of AI and business. With a deep understanding of both the technology and the legal landscape, Sheppard Mullin is empowering clients to embrace AI while safeguarding against potential pitfalls. It is incumbent upon business and legal professionals to approach AI adoption with caution, mindful of the inherent risks and the considerations that accompany it. With the guidance of forward-thinking firms like Sheppard Mullin, the real estate industry is poised to harness the full potential of AI while mitigating its risks, ushering in a new era of innovation and prosperity. We provide internal legal training on AI issues and help companies develop and implement AI policies.

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