AI Ethics and Commercial Real Estate Transactions

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Commercial real estate professionals are increasingly using artificial intelligence (AI) tools to enhance transaction efficiency, but such tools also pose complex ethical challenges. This article addresses legal and ethical issues surrounding the use of AI so that commercial real estate professionals can deploy these tools responsibly and safely.

Understanding Evolving AI Applications

Two main types of AI are currently in use: Reactive Machine AI and Limited Memory AI. The first widely used AI tools were Reactive Machine AI—AI that reacts to certain condition inputs exactly the same every time—such as Deep Blue, the IBM supercomputer that defeated chess grandmaster Garry Kasparov by analyzing the placement of chess pieces, predicting Kasparov's likely strategies and employing strategies to defeat him. Unlike Reactive Machine AI, the second kind of AI, Limited Memory AI, such as OpenAI's ChatGPT and DeepSeek, builds on learned data and outputs as part of its decision-making process.

AI Functionality	**Description**
Reactive Machine AI (*Narrow AI*)	• No memory • Designed to perform specific ta • Only works with presently available data
Limited Memory AI (*Narrow AI*)	• Can recall past events and outputs • Works with presently available a previously provided data • Cannot retain previously provid data over a long period of time

Theory of Mind AI (*General AI*)	• Can understand human emotio and thoughts • Personalized interactions base on the user’s needs • Ability to understand and contextualize artwork
Self-Aware AI (*Super AI*)	• Understand human emotions a thoughts, and have thoughts a emotions of its own

AI Usage and Common Pitfalls in Commercial Real Estate

AI tools can optimize every aspect of commercial real estate acquisitions and management. Organizations use AI to (1) summarize and categorize properties by type or terms (*e.g.*, market-rate vs. affordable multifamily properties); (2) create budgets, models, and forecasts; (3) streamline reporting for lenders, investors, and government agencies; (4) monitor trends in the marketplace; and (5) determine appropriate business decisions. AI tools can also be used to determine appropriate market-rate rents and costs and when it is best to invest in, or divest from, a property. However, it is important that organizations and their employees understand how AI tools operate and the associated risks and mitigation strategies.

Because AI is susceptible to “hallucinations” and other unpredictable mistakes, commercial real estate professionals should always double-check the results of any AI work product to ensure its accuracy. Organizations should never rely solely on the judgment of AI when making decisions. AI tools can develop and be susceptible to biases favoring certain information and metrics, potentially leading to inaccurate final answers and recommendations based on faulty premises.

Commercial real estate professionals must also be aware of the confidentiality issues that using AI can raise. Outsourcing work to AI does not relieve the organization or the individual of their responsibility to abide by existing laws and terms of agreements. For example, if an AI tool retains data to aid its learning capabilities, inputting confidential data into that tool can potentially violate confidentiality requirements, as it could be considered a disclosure of confidential information to a third party (the AI tool provider). The Department of Justice's antitrust lawsuit against multifamily property management service provider Real Page and its largest customers is a cautionary tale. The suit, which was predicated on the theory that customers were inputting confidential information into Real Page's algorithms to produce profit-maximizing pricing decisions based on the aggregated confidential information of their competitors, reinforces that organizations are ultimately responsible for ensuring their safe and legal use of AI.

Safe Parameters for Using AI

To safeguard against potential ethical issues, organizations should establish internal policies governing the use of AI. These policies will ensure employees are adequately trained to use AI tools safely and within the bounds of the law. The American Bar Association Resolution 604 offers several recommendations for attorneys, which can be applied to commercial real estate professionals.

- Organizations should ensure that any AI tools available to their employees are subject to human authority, oversight, and control.
- Organizations should always take reasonable precautions to mitigate the risks of disclosing confidential information. This includes providing AI training to employees and limiting the use of AI tools within the workplace to those that have been vetted for confidentiality protection.
- For software that analyzes and produces summaries, organizations should rely only on AI that transparently traces and discloses the sources of data points used in generating answers.

As AI advances, familiarity with AI tools will be vital to staying on the cutting edge of information technology in commercial real estate markets. Responsible individuals and organizations will be accountable for any negative consequences caused by their use of AI. By familiarizing their employees with AI tools and providing clear parameters for their use, organizations can become more efficient, reduce human error, and ensure all requirements under applicable laws and agreements are fully and timely satisfied.

Frost Brown Todd counsels investors, developers, local governments, nonprofits, and other key stakeholders on subsidized and affordable housing transactions across the country. We stay at the forefront of all statutory and regulatory updates within the industry, including those related to the use of AI, and are ready to assist clients with navigating the ever-changing regulatory environment. For more information, please contact the authors or any attorney with Frost Brown Todd's Multifamily Housing industry team or Commercial Finance practice group.

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