

# Commercial Real Estate in the Age of AI

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**PRACTICES** AI and Deep Learning, AI and Technology, Commercial Real Estate Leasing, Real Estate

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A great deal has been written about the impact artificial intelligence (AI) will have on the real estate industry and the preparation and negotiation of legal documentation for real estate transactions. There is a general sense that the real estate industry, like the rest of the business community, is at the forefront of new technology that will reinvent the process of how we identify and negotiate our real estate issues and draft related documentations.

As we contemplate the impact of AI, we tend to think of AI as a form of “intelligence” and as something that will think for us on a more efficient and comprehensive basis. AI is often discussed as being faster, cheaper and better. However, when we take a closer look at AI in its present form, we better understand that its strengths are in:

- i. Locating and analyzing data
- ii. Creating algorithms based on an assumption of recognized patterns
- iii. Providing guidance or even complete documentation, which is reflective of those assumptions

AI's capabilities allow it to gather and review large volumes of information and create formulas from that information that are not necessarily “intelligent,” but provide perceived predictive behavior.

Today, when the nature of a request to AI lends itself to pattern recognition, these systems work remarkably well. However, where the process is more than pattern recognition or determining predictive behaviors and requires judgment or tradeoff that may be unique to a transaction, there can be complications. In response to a request, AI will weave together information it believes to be relevant to complete a task and apply its perceived assumptions, whether appropriate or not. The product provided may look correct and may read well, but on reflection it may not accurately reflect the breadth of options or choices that would be available through a typical real estate negotiation process. These outputs are often referred to as “hallucinations,” which constitute fabricated information that may appear correct but generally will not reflect the intended result.

Does this mean AI has no use or application in the process of preparing legal documentation in the real estate industry? Used correctly and armed with the correct parameters, there is no question that AI will be very helpful in (i) collecting and analyzing market data, which will allow the parties to engage in better and more accurate critical thinking as to the economics of a deal, (ii) creating abstracts of documents and (iii) assisting the parties in analyzing legal documents more quickly. With some assistance, AI may even provide viable alternative concepts or provisions the parties might consider. While these services may augment the process of negotiating real estate transaction documents, the parties will still need to engage in the time-honored process of negotiating those provisions in the agreements that are of particular importance to the parties.

Consider how this new technology might enhance the process of commercial leasing or preparation of purchase and sale agreements. Each document includes provisions that raise a myriad of issues and sub-issues to be considered and negotiated. Such issues may have a high degree of predictability as to what will be discussed and a resulting concept to be included in the document.

As to each of these issues, AI can be useful in developing an algorithm which (i) identifies the language in the agreement for the benefit of each party involved (ii) assesses the appropriateness of the language from the perspective of the party and (iii) may also add any special considerations on a state-by-state or market-by-market basis. AI may even make suggestions on appropriate language to address these issues.

By way of example, a lease form presented may state:

- i. If alterations are allowed by the tenant
- ii. What level of consent from the landlord, if any, is required
- iii. If there are exceptions to the requirement for consent
- iv. What the procedure is to govern the installation, if any
- v. Special limitations on the alterations, if any
- vi. Who owns the resulting improvements
- vii. If the alteration is required to be removed by the tenant at the end of the term of the lease

While AI may not provide a definitive answer on how the lease should read, it may be able to quickly spot and outline the issues that will be of concern to a landlord and/or tenant and provide context and alternatives for consideration based on a typical pattern of negotiation. Through this process, the parties will be able to expedite a high-level review and discussion of the business arrangement with greater efficiency.

AI also has the capability to provide data for market analysis, estimates of preliminary construction costs and timeframes for construction, as well as development of a listing of appropriate due diligence matters for the parties to the agreement.

For those who are concerned as to how AI may impact their future role in this industry, AI will act as an important new tool, which will reduce busy work and allow the parties to quickly identify issues that may be of concern.

However, for all of its many benefits, it will not be able to factor in all of the intangibles. The data points that do not follow a pattern might include:

- i. The economic necessity to purchase, sell or lease the property or location, (ii) tenant mix for a leased property
- ii. Each parties need to lease or sell the location
- iii. The financial position of each of the parties
- iv. Restrictions on use, that are particular to the location
- v. Timing issues
- vi. Construction costs and limitations
- vii. Preexisting or unique property conditions
- viii. The personalities of the parties.

For issues such as these, human expertise remains essential to address the nuanced aspects of the transaction.

Just as the advent of the word processor gave rise to more accurate and comprehensive documents and the ability to quickly redline changes and email has enhanced the ability for parties to communicate at great speed and efficiency, AI will allow us to dissect documents and discuss relevant issues at a more efficient pace. In the final analysis, this will enhance our capabilities rather than act as a replacement of our necessary skills.

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