

Course Title: Real Estate, Responsibility, & the Rise of AI: *Navigating Ethics in Property Transactions*

Time: 1 hour (50 minutes of live lecture, 10 minutes for questions and answers)

Objective:

- (a) Discuss what artificial intelligence or “AI” is, and a brief overview of technology which has emerged making the use of “AI” possible in our day-to-day lives in the 21st century.
- (b) Discuss if, and how, lawyers and business professionals can use generative AI in an ethical manner in the ordinary course of their practices/business.
- (c) Discuss and consider how market leaders are currently using AI and the path for the future.

Outline:

1. AI Generally: An Introduction

a. What is AI and how has technology evolved throughout history?

i. The definition of “AI”

1. Artificial Intelligence or “AI” is the development of computer systems capable of performing tasks that historically only humans could do, such as decision-making, reasoning, self-improvement, creativity, and perception.

ii. Brief History of AI

1. Concepts of AI date back to 1935 with Alan Mathison Turing, a British logician and computer pioneer, where he described an abstract computing machine with limitless memory and a scanner moving through the memory, reading the symbols and writing further symbols.
2. 1951 – First successful AI program at University of Manchester, England, which by 1952 could play a complete game of checkers at a reasonable speed. Similar checkers program written in US for IBM in 1952.
3. 1991 Hugh Loebner begin the Loebner Prize for the first computer to pass the Turing Test (an interrogator questions a computer and a human foil in an attempt to determine which is the computer).
4. LISP was the AI language in from the 1960s through the early 21st Century when Python, Java and C++ replaced it.
5. 1980s – XCon was first system on the commercial market, designed to assist in the ordering of computer systems by automatically picking components based on customer’s needs.
6. 1988 – Rollo Carpenter invented chatbot Jabberwacky, which was programmed to provide interesting and entertaining conversations to humans.
7. 1997 - Deep Blue beat world chess champion
8. 2003 – Mars rovers navigated planet without human intervention
9. 2011 – IBMs Watson won Jeopardy! Against two former champions.
10. 2020s – ChatGPT uses OpenAI to learn, CoPilot (now incorporated into various Microsoft programs like Outlook and Teams), CoCounsel for legal professionals.

iii. Technology Today.

1. Being familiar and efficient with technology is now a core competency for most professions. There is an emergence of the daily use of AI with machines like ChatGPT, OpenAI, and other consumer-facing products.
 - b. The four categories of AI (based on their functionalities)
 - i. Reactive Machine AI
 1. Technology systems without memory that are designed to perform very specific tasks.
 - a. One example of this is the six-game match and rematch between then-world chess champion Garry Kasparov and IBM's super-computer Deep Blue in the late 1990s. Kasparov won the first match in 1996 but lost against Deep Blue the following year, signaling the bridging gap between artificial intelligence and human intelligence.
 - ii. Limited Memory AI
 1. As its name indicates, this type of AI does have limited memory, so it can recall past events and outcomes. It uses both past and present information to choose a particular course of action most likely to achieve a wanted outcome. However, though it can use past data for a certain amount of time, it cannot keep that data stored for a long-term period.
 2. Examples of Limited Memory AI
 - a. "Generative AI": takes data, analyzes it for patterns, and then applies what it has "learned" to make predictions. Chatbots like ChatGPT fall under this subcategory.
 - b. Self-driving cars: these machines evaluate real world information and makes informed decisions on braking, speeds, etc.
 - iii. Two Unrealized Categories of AI
 1. Theory of Mind AI
 - a. Currently hypothetical, this AI is the ability of machines to understand the thoughts and feelings of others, whether human or robots.
 2. Self-Awareness AI
 - a. Again, this category of AI is unrealized and purely theoretical, but is the idea of an AI that would have its own set of needs, beliefs, and emotions.
 - iv. A subset of AI: *Metadata*
 1. Metadata is data in electronic files that stores information, such as but not limited to the following: who created the document, when it was created, the software that was used, comments embedded in the document, and a record of changes that have been made to the document.
 2. Though mostly harmless on its face, Metadata can potentially include a client's confidential or sensitive information.
- 2. Professional Guidance**
- a. What guidance is out there from Model Rules, other states, Kentucky, etc.?
 - i. ABA Resolution 604 (February 6, 2023)
 1. Urges organizations that design, develop, deploy and use AI to follow guidelines:

- a. Ensure products, services, systems, and capabilities are subject to human authority, oversight, and control;
- b. Responsible individuals and organizations should be accountable for consequences caused by use of their AI products, services, systems, and capabilities unless they have taken reasonable measures to mitigate against that harm or injury; and
- c. Developers should ensure the transparency and traceability of their AI products, services, systems, and capabilities, while processing associated intellectual property, by documenting key decisions made with regard to the design and risk of the data sets, procedures, and outcomes underlying their AI products, services, systems, and capabilities.

2. Comments:

- a. It's not appropriate to shift legal responsibility to a computer or an algorithm rather than to responsible People
- b. White House Office of Science and Technology Policy released a blueprint for an AI Bill of Rights for "building and deploying automated systems that are aligned with democratic values and protect civil rights, civil liberties, and privacy."
 - i. They explained some possibilities are: the right to know when and how AI is influencing a decision affecting civil rights and liberties, freedom from being subject to AI that hasn't been carefully audited for accuracy and bias and to ensure it has been trained on sufficiently representative data sets, freedom from pervasive or discriminatory surveillance and monitoring, and the right to meaningful recourse if harmed by the use of an algorithm.

ii. ABA Formal Opinion 512 (July 29, 2024)

1. Competence

- a. Lawyers do not need to become GenAI experts but must have a reasonable *understanding* of the capabilities and limitations of the specific tools that the lawyer is using.
 - i. Understand risks and benefits of the tools or draw on the expertise of others who can provide guidance; including what items the GenAI may not pick up and incorporate into its output (i.e., handwritten changes in margins changing terms of documents).
- b. Give appropriate degree of independent verification or review of outputs
 - i. What the appropriate degree is will vary based on the tool being used and what it's being used for
- c. Cannot rely on GenAI as a substitute for professional judgement; double check the GenAI's output.
- d. The growth of GenAI could eventually mean that lawyers will be expected to utilize GenAI to competently represent clients

2. Confidentiality

- a. Understand the specific GenAI tools – difference in open source models and enterprise tools that keep information contained
 - b. Consider that a GenAI tool used exclusively by a firm will likely have inputs of information from various clients so the GenAI tool is learning information from one client that may be included in the output for another client which is subsequently disclosed outside of the firm
 - i. consider also screened lawyers in the firm and inadvertently using information to help another client
 - ii. Client's informed consent is required prior to inputting information related to the representation
- 3. Communication
 - a. Model Rule 1.4(a)(2) states that a lawyer shall “reasonably consult with the client about the means by which the client’s objectives are to be accomplished”
 - b. Disclosure of the use of GenAI may be required but there may be circumstances where it is unnecessary (i.e., the client does not ask and lawyer is using GenAI for idea generation without inputting specific information related to the representation)
 - i. Consider: client’s needs and expectations; scope of representation; sensitivity of information; GenAI’s importance to a particular task and the significance of that task to the overall representation; how the GenAI tool will process the client’s information; and extent to which knowledge of the lawyer’s use of the GenAI would affect the client's evaluation of or confidence in the lawyer’s work.
- 4. Meritorious Claims and Contentions and Candor to the Tribunal
 - a. Generally relate to litigation but key takeaway is to review GenAI outputs for accuracy and misrepresentations
- 5. Supervisory Responsibilities
 - a. Managerial lawyers must establish clear policies for a firm’s use of GenAI and supervisory lawyers must take reasonable efforts to ensure the firm’s lawyers and nonlawyers are trained in the ethical and practical use of GenAI.
 - b. Lawyers are also responsible for supervising others outside of the firm (including nonlawyers) insofar as they employ GenAI in connection with the representation
 - i. For real estate lawyers, this could be expanded to implicate lawyers’ ensuring their clients are using GenAI appropriately in underwriting or analysis of transactions (prevent misrepresentations, discrimination, etc.)
 - ii. Specifically references understanding the GenAI vendors and tools
- 6. Fees

- a. If GenAI tools are an expense that will be billed to the client, it must be agreed in writing. Otherwise, treated as an overhead expense not to be included in the bill
 - b. Hourly billing must be based on the lawyer's actual time spent and not the time that would have been spent without the use of GenAI
 - i. Clients should get the benefit of increased efficiency reflected in their bills; can't bill what it would've taken you if GenAI reduces the time spent on the task.
 - c. Time spent developing competence in the GenAI tools may not be billed to the client (similarly to time spent in CLEs) unless the client requires a specific GenAI tool for the representation
 - d. Initial uses of GenAI for a task may take longer, as users develop better and more efficient prompts to re-use for repetitive tasks in real estate deals (i.e., PSA summaries, lease abstracts, review of complaints), and then gradually take less time as the prompts are honed in.
7. Overall theme: Use GenAI as a starting point, double and triple check the outputs, and use your trained lawyer judgment, not GenAI's judgment.
- iii. California State Bar - Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (November 23, 2023)
 1. Geared toward daily use of GenAI and creating an actionable to-do list for lawyers using GenAI as opposed to the ABA opinion which gives concepts to be considered in a more academic format.
 2. This is a concise summary of the practice guidance paired with the applicable rules.
 3. This points out confidentiality as a key point, such that a lawyer must not input confidential information into a GenAI solution that lacks adequate confidentiality and security protections.
- iv. New York State Bar Association – Task Force on Artificial Intelligence
- v. Florida Bar Association's Board of Governors – Ethics Advisory Opinion 24-1
- vi. State Bar of Michigan – Ethics Opinion JI-155 (October 27, 2023)
- vii. New Jersey – Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers (January 24, 2024)
- viii. More and more state bar associations are issues guidance on use of GenAI in practice, with many having very similar key points as previously noted.
- b. Guidance from the Kentucky Rules of Professional Conduct & Interpretation from the Kentucky Bar Association Ethics Opinions
 - i. SCR 3.130(1.1) - Competence
 1. "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."
 2. It is no surprise that the Kentucky Bar Association *Ethics Opinion KBA E-457* states that a lawyer has an ethical duty to keep abreast of the use of AI in the practice of law, like other previous technological advances.
 - a. Really, lawyers have already been utilizing artificial intelligence in their practice for years, rather they are aware of it or not -

technology like spell-check, a “grammar search” and auto correcting functions in email programs are all forms of AI.

ii. SCR 3.130(1.6) - Confidentiality of Information

1. “(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
2. (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: (1) to prevent reasonably certain death or substantial bodily harm; (2) to secure legal advice about the lawyer's compliance with these Rules; (3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding, including a disciplinary proceeding, concerning the lawyer's representation of the client; or (4) to comply with other law or a court order.”
 - a. While using AI, an attorney is under a continuing duty to safeguard the client’s confidential information. (Ethics Opinion KBA E-457).

iii. SCR 3.130(1.4) - Communication

1. “(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) **reasonably consult with the client about the means by which the clients objectives are to be accomplished**; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.” (emphasis added).
2. “(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding representation.”
 - a. However, Ethics Opinion KBA E-457 explicitly states that “there is no ethical duty to disclose the rote use of AI generated research for a client’s matter unless the work is being outsourced to a third party; the client is being charged for the cost of AI; and/or the disclosure of AI generated research is required by Court Rules”.

3. **Three Ethical Considerations for Lawyers: Accuracy, Transparency, and Confidentiality**

a. Accuracy

- i. AI-generated fictions: AI often “hallucinates”, which is a fun, commonly used term for when AI gets something wrong.
 1. Example: in May of 2025, the United States District Court for the Central District of California imposed sanctions attorneys who submitted briefs with inaccurate case citations and quotes, which resulted from the use of artificial intelligence. One of the attorneys had used AI tools to create an “outline” for a supplemental brief. It then appeared that no attorney cite-

checked or reviewed the referenced research, as 9 of the 27 citations were incorrect in some way, and at least 2 of the authorities cited in the attorneys' brief did not exist at all.

- ii. AI may not be trained to or understand the specific issues relevant to your transaction or matter. There also might be "local law" issues, such as with certain real property-related documents like Purchase Agreements, Deeds, Leases, Memorandums of Leases and Loan Documents.

b. Transparency

- i. Upon client engagement, should you disclose the anticipated use of AI?
 - 1. A judgement call must be made to determine how in-depth the disclosure should be.
 - 2. As previously indicated, Ethics Opinion KBA E-457 states that there is no duty to disclose AI used to generate research unless it was third-party outsourced, the client is being charged for the AI program, or disclosure is required by Court Rules.
 - 3. On the flip side, to satisfy "Informed Consent" in SCT 3.130, simple boilerplate disclosures in an engagement letter may not be enough to meet the "informed" of the definition.
- ii. The use of AI is often efficient in cutting down time and your client's billable hours should reflect that productivity.

c. Confidentiality

- i. The uploading of confidential or proprietary information can only be done with informed consent of all parties.
- ii. As previously discussed, metadata encrypted in documents (and even emails) can contain sensitive client information.
 - 1. Safeguarding against dangerous transmission of metadata: e-mail add-ins can be incorporated in programs like outlook where metadata is removed from e-mail attachments before they are sent.

4. **Ethical Considerations for Business Professionals**

- a. Use of AI in underwriting of real estate transactions
 - i. Confidentiality clauses in contracts typically limit who information may be disclosed to if provided as typical "due diligence".
 - 1. Know what type of GenAI that is being used. Is it OpenSource, so what you input will help broadly teach the AI, or a closed source, where only limited information included within the organization's AI? What security and protections do you have associated with the AI?
 - ii. Disclosure of personal information in lending transactions.
 - 1. There are some AI software suites already in use in the marketplace to automate customary underwriting in the residential space, but slower adoption has been seen in the commercial space.
 - 2. Uploading of personal or sensitive information should be provided
 - iii. Consideration of biases in AI algorithms, particularly with regard to "making decisions".
 - 1. Susceptible to basing decisions on the wrong metric that may be discriminatory; users must be knowledgeable about the outputs and metrics used and to review. Do not just accept the output. Think and consider if there are any issues with the output the user received.

- iv. Use of narrowly tailored products that are for the specific use needed is recommended in lieu of generally available products such as ChatGPT and similar generative AI. Use enterprise services with specific vendor contracts for specific use. As GenAI develops, more GenAI tailored for specific uses/industries will pop up. Do adequate research prior to use to understand all of the various concerns discussed.

5. **Applying Artificial Intelligence in Legal Practice**

a. Document Drafting

- i. AI programs like ChatGPT and Co-Counsel can review and summarize lengthy contracts, such as purchase and sale agreements and loan documents.
- ii. They can quickly check for consistency and errors across documents, like missing signatures and inconsistent or ambiguous defined terms.

b. Research

- i. Generative AI can also research and recap relevant case law and statutes.
- ii. However, as shown from the real-life examples we've discussed, cite-checking and reviewing the AI's ending product is a necessary step to avoid any AI-created errors and maintain the ethical practice of law.

c. Client Communication

- i. Some firms have employed chatbots on their firm websites to answer FAQs from potential clients.
- ii. Artificial intelligence can be used to change the tone of an email to your client or remove legal jargon in order to simplify communication.

6. **Applying AI to CRE Management and Transactions**

- a. AI-powered databases are able to quickly and efficiently summarize and group properties and other data by type, terms, etc. – through use, users will be able to learn their selves on the different functions of the GenAI being used and what information the user can request the AI provide and in what formats such information is provided. However, users must know the limits of the AI (i.e., how many documents can be in the database) and how the AI can output the information for review by the user.
 - i. Quickly identify all NNN properties or leases expiring in set time
 - ii. Quickly identify and group all properties subject to or benefiting from encumbrances (i.e. parking agreements or exclusive tenant rights)
 - iii. Group properties or subsidiaries by financing requirements (i.e. reporting dates, loan maturities)
- b. Generate marketing materials
- c. Create budgets, models and forecasts
 - i. Quickly and accurately process and evaluate historical budgets and expenses to generate a forward-looking budget
 - 1. Consider any non-recurring costs that would need to be included in the inputs in addition to the historical data (cap ex; lease rolls)
- d. Streamline and process reporting data for lenders, government agencies, taxes, and audits.
 - i. Key – need human oversight to ensure all inputs and outputs are accurate to avoid submitting false or misleading reports. Inputs are the key and where the output can ultimately be wrong. While the AI was correct based on the input, the output is incorrect because the input was incorrect to begin with.
- e. Brokers or agents can more efficiently search the market and offerings to match buyers or tenants with sellers or properties that may not have been otherwise identified

- f. Monitor trends in the market to time investments/divestments, plan rent increases (or hotel costs in the lodging sector), track comparable assets to determine market needs (space per person, amenities, etc.)
 - g. Drafting different documents, sections, clauses, etc. to update existing documents. These need to be reviewed by a user for accuracy and to ensure all key goals of the drafting are properly covered by the output.
7. What does the future of AI Look like?
- a. Discussion of the continued evolution of the landscape of generative AI in the legal profession and the business side of real estate transactions and management.
 - i. Agentic AI – has a degree of autonomy to act on its own in the pursuit of specific goals. Digital intern that can make decisions, plan actions and learn from its experiences. Expected to be capable of acting as an “agent” for the user. Need to be aware of how it works and evolves to watch for all the benefits and risks previously discussed. Users need to continually stay up to date on the abilities and risks. If user is obtaining a license to use a specific AI program, should regularly check for updated guidelines, ability and even request trainings for new features and abilities.
 - b. What does the legal profession currently provide?
 - i. Westlaw, Lexis, Casetext/Co-Counsel and numerous other platforms provide some form of “AI” enhanced tools (primarily designed to assist in legal research and reviews).
 - 1. Can draft provisions or documents but the lawyer should apply professional judgement to revise as necessary
 - 2. Can review and summarize documents, but lawyers should review the sections cited to to confirm the AI’s interpretation in correct and use legal judgment.
 - 3. Can pull data from databases set up by user, but again, lawyers should double check the cited to sections to confirm the output is correct regarding the information the user expected to receive or would look for if user was doing the task.
 - ii. Tools provided by KY Bar Association
 - 1. The Kentucky Bar Association, in collaboration with Fastcase, offers members free access to an advanced legal research platform, featuring the AI-powered legal assistant – Vincent, from global legal service provider vLex. This platform contains Fastcase's comprehensive libraries covering all 50 states and Federal level materials from which you can apply Vincent to ensure you're not missing any relevant authority and achieve in seconds what would have taken hours.
 - iii. What does the future hold?
 - 1. Continued innovation by companies like Westlaw with their CoCounsel GenAI program. They had version 1.0 in 2024, beta tested 2.0 in late 2024, and launched 2.0 in early 2025. They are continuing to add additional abilities, increase capacity, and increase speed.
 - c. The future of AI in the CRE space
 - i. AI for performance
 - 1. Reduced human errors

2. More efficiency and the need to keep up with the competition or re-imagine the process
 3. Utilizing AI for management to ensure all applicable laws, agreements, financing requirements and leasing requirements are met
- ii. AI's impact on the ground
1. Property Operations – Tenant chatbots can be utilized as well as AI's use for marketing and the leasing process.
 2. Investor Relations – AI can be used to better target potential investors and keep existing investors informed through marketing materials and answers to investor's questions.
 3. Business Support – AI can be used to help hiring process, including screening resumes.
 4. Asset Management – AI can help analyze property data in a more efficient and timely manner.
 5. Finance and Accounting – AI can assist with financial reporting and forecasts/risk assessments.
 6. Acquisitions - AI can help with due diligence review for properties being acquired.

8. Question and Answer (10 Minutes)