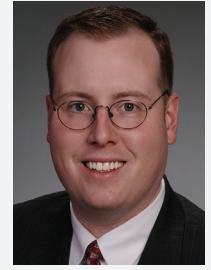


Generative AI and the Ethical Real Estate Lawyer

Applying ABA Formal Opinion 512 to Transactional Practice¹

By J. Cliff McKinney



I. Introduction: AI as a Tool, Not a Substitute for Professional Judgment

Generative artificial intelligence has quietly become part of real estate law practice. Unlike older technology, which primarily assisted with organizing, searching, or formatting files, new generative AI tools can draft legal documents, summarize records, identify potential issues, and suggest actions in natural legal language. Since transactional law relies heavily on drafting documents, verifying details, and tracking deadlines, it's easy to see why these tools are appealing.

These new tools present new ethical issues for lawyers to navigate. Generative AI does not merely accelerate legal work; it reshapes how lawyers interact with information. AI outputs can appear authoritative while being incomplete, misleading, or flatly wrong. They can incorporate confidential information into opaque systems with unclear retention and reuse practices. And they can significantly reduce the time required to perform tasks that have traditionally formed the basis for legal fees.

The ABA introduced ABA Formal Opinion 512 on July 29, 2024, to help provide guidance for lawyers using AI. ABA Formal Opinion 512 does not create a new body of "AI ethics." Instead, it reaffirms foundational principles of professional responsibility as they apply to AI. The Opinion recognizes that technology may assist the lawyer, but it does not assume the lawyer's ethical obligations. As the Opinion emphasizes, generative AI tools are "a moving target—indeed, a *rapidly* moving target," and lawyers must continually assess their use against existing duties.²

The Opinion frames the ethical analysis around familiar rules: competence, confidentiality, communication with clients, supervision, candor, meritorious contentions, and reasonable fees. The Opinion clearly states that each rule applies fully and without dilution to AI-assisted practice. The core message is straightforward but uncompromising: regardless of the tool used, "the lawyer is fully responsible for the work."

Real estate lawyers routinely make representations that have long term legal and financial consequences: legal descriptions, title certifications, estoppels, lender conditions, recorded instruments, and opinion letters. Errors in these contexts can give rise to malpractice claims, rescissions of transactions, insurer denials, and disciplinary exposure years after a closing.

Generative AI amplifies these risks in two primary ways. First, it reduces the barriers to creating legal content, resulting in a higher volume of drafted materials and diminishing the careful review that was previously encouraged by greater effort. Second, it complicates the distinction between assistance and delegation. When AI proposes clauses, summarizes title commitments, or identifies "market" positions, users may be inclined not only to utilize the tool but also to place undue reliance on its output.

ABA Formal Opinion 512 rejects that temptation. It does not require lawyers to avoid AI; in fact, it may be interpreted as requiring lawyers to use AI. The Opinion assumes that AI will be used and focuses on the obligation of lawyers to implement appropriate safeguards: understanding the tool's limitations, protecting client confidentiality, verifying outputs, supervising subordinate use, communicating with clients when necessary, and billing in a manner that reflects actual value rather than imagined effort.

This paper applies the framework of ABA Formal Opinion 512 specifically to the practice of real estate law. It does not attempt to catalogue every AI tool or predict future regulation. Instead, it asks a more practical question: what does ethical AI use look like in the daily work of a transactional real estate lawyer? By examining common real estate workflows, drafting and negotiating agreements, reviewing title and survey materials, managing closings, supervising staff, and billing clients, this paper translates the ABA's guidance into concrete practices that can be implemented immediately.

The goal is not compliance for its own sake. It is professional risk management. In an era where AI can draft faster than lawyers can read, the ethical real estate lawyer's comparative

advantage is not speed, but judgment. ABA Formal Opinion 512 makes clear that judgment remains non-delegable and that, even in an AI-assisted practice, responsibility stops with the lawyer.

II. Competence (Model Rule 1.1): Understanding and Verifying AI Outputs

ABA Formal Opinion 512 makes clear that competence is the gateway ethical duty for the use of generative AI. Every other obligation—confidentiality, communication, supervision, candor, and fees—presupposes that the lawyer understands what the tool is doing, what it cannot do, and how its outputs must be treated. The Opinion does not treat AI competence as optional or aspirational. It treats it as a present obligation grounded in Model Rule 1.1.

Model Rule 1.1 requires "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Opinion 512 explains that this duty now includes having "a reasonable understanding of the capabilities and limitations of the specific [generative AI] technology that the lawyer might use." Lawyers are not required to become technologists or data scientists, but they must understand sufficient generative AI to recognize when its output is unreliable, incomplete, or inappropriate for the task at hand.

The Opinion emphasizes that generative AI tools do not reason or analyze as lawyers do. They generate responses by predicting the most statistically probable continuation of a prompt based on patterns in training data. As a result, AI tools may produce text that is fluent, confident, and internally coherent, while being legally incorrect, factually unsupported, or dangerously incomplete. This combination of polish and fallibility is precisely what makes uncritical reliance ethically problematic.

Accordingly, the ABA draws a bright line between use and reliance. While lawyers may use AI tools to assist with drafting, summarizing, organizing, or brainstorming, they may not rely on AI outputs without an appropriate degree of independent verification. The Opinion underscores that verification is not optional and cannot be delegated to the tool. Regardless of efficiency gains, "the lawyer is fully responsible for the work."

A. Why Competence Is Especially Acute in Real Estate Practice

Real estate transactions hinge on documents where minor errors can have outsized consequences: an incorrect legal description, a missing consent requirement, an overlooked title exception, or a poorly integrated lender condition. These

are precisely the kinds of details generative AI is most likely to mishandle, either by omission or by confident fabrication.

For example:

- An AI-generated lease clause may reflect "market" language but fail to account for local statutory requirements, lender-imposed restrictions, ground lease requirements, or negotiated risk allocations.
- An AI summary of a title commitment may overlook access issues, blanket easements, survey exceptions, or endorsements critical to financing.
- An AI-generated closing checklist may not track the actual conditions precedent in the executed agreement, leading to incomplete or premature closings.

In all of these situations, the ethical concern does not stem from the use of AI itself. Rather, it arises from the lawyer's failure to exercise independent judgment and to properly verify AI-generated material before relying on it.

B. Verification as the Practical Expression of Competence

Opinion 512 repeatedly returns to verification as the practical mechanism by which competence is satisfied. Verification means more than a cursory review for obvious errors. It requires the lawyer to confirm that:

- legal propositions are supported by current, applicable law;
- factual assertions align with the operative documents;
- drafted language reflects the actual deal structure and risk allocation; and
- no "hallucinated" authority, assumptions, or omissions have crept into the work product.

In transactional practice, this means reading the underlying documents rather than trusting summaries; checking legal descriptions against surveys and prior deeds; cross-referencing AI-drafted clauses against lender requirements, title exceptions, and negotiated business terms; and ensuring that AI-assisted drafts are integrated coherently into the larger agreement.

The Opinion's insistence on verification also reflects a broader point: competence is process-based rather than outcome-based. A transaction that closes successfully does not retroactively cure a failure to verify. The ethical inquiry focuses on whether the lawyer exercised reasonable

professional judgment at the time the work was performed.

C. No Delegation of Professional Judgment

Perhaps the most important takeaway from Opinion 512's competence analysis is that professional judgment cannot be delegated to a machine. AI tools may suggest options, flag issues, or generate language, but the decision to accept, reject, or modify that output must always be the lawyer's. When AI output influences substantive legal advice or transactional structure, the lawyer must understand why the recommendation is sound or why it is not.

This principle is particularly relevant in real estate transactions, where lawyers often advise on matters that blend legal and business judgment: whether to waive a condition, accept a title exception, restructure a closing timeline, or proceed in the face of known risks. AI tools may assist in identifying issues, but they cannot weigh client risk tolerance, lender dynamics, local practice norms, or long term strategic considerations. Treating AI recommendations as authoritative substitutes for judgment risks violating Rule 1.1 even if no immediate harm occurs.

D. The Emerging Expectation of Technological Literacy

Opinion 512 also reflects an evolving expectation that lawyers remain reasonably current with technology relevant to their practice. As generative AI tools become more prevalent, ignorance of their basic operation and limitations will become increasingly difficult to justify. The ABA signals that competence is a continuing obligation, requiring lawyers to reassess tools as they evolve and as their use becomes more integrated into standard practice.

This means periodically reassessing:

- which tools are approved for use;
- what tasks are appropriate for AI assistance;
- how outputs are reviewed and verified; and
- whether firm policies and training remain adequate.

E. Bottom Line for Real Estate Lawyers

Under Opinion 512, competence does not require abandoning AI or mastering its technical architecture. It requires intentional, informed, and skeptical use. Generative AI can accelerate real estate practice, but it also magnifies the consequences of inattentiveness. An ethical real estate attorney should regard AI-generated output as an initial resource,

maintaining personal responsibility for each document, recommendation, and representation issued by the firm.

III. Confidentiality (Model Rule 1.6): The Ethical Risk Lies in the Inputs

Unlike competence or candor, which are triggered by outputs, confidentiality risks arise when information is entered into an AI system. Once confidential client information is disclosed, the ethical violation cannot be undone. Model Rule 1.6 requires lawyers to protect "all information relating to the representation," regardless of its source, unless the client gives informed consent or an exception applies. Opinion 512 reaffirms that this obligation applies fully to AI-assisted practice and is not relaxed by convenience, efficiency, or the ubiquity of AI tools.

A. Why Generative AI Creates Novel Confidentiality Risks

Generative AI tools differ from traditional legal software in ways that are directly relevant to confidentiality. Many AI systems are:

- externally hosted,
- operated by third-party vendors,
- capable of retaining user inputs, and
- designed to improve performance by learning from data.

For these reasons, Opinion 512 instructs lawyers to assess not only the risk of disclosure outside the firm, but also the risk of disclosure within the firm, including unintended access across matters or ethical screens. The Opinion draws a critical distinction between tools that are fully closed and tools that may reuse or retain information. Where a generative AI tool is "self-learning" or otherwise capable of exposing client information beyond the specific task, the ABA states that informed consent is required before inputting client information. This requirement applies regardless of whether the disclosure is intentional, likely, or even detectable. The ethical concern is the risk of disclosure, not proof of actual harm.

B. Real Estate Lawyers Face Heightened Confidentiality Exposure

Transactional real estate lawyers are particularly vulnerable to confidentiality missteps because their daily workflows involve large volumes of sensitive, deal-specific information that may not appear obviously "confidential" at first glance. Common examples include:

- draft purchase agreements reflecting negotiated pricing, earn-outs, or confidential concessions;
- lender term sheets, underwriting assumptions, guarantor financials, and internal credit memoranda;
- tenant rent rolls, operating statements, CAM reconciliations, and proprietary sales data;
- unresolved title defects, access issues, survey discrepancies, or off-record agreements that materially affect leverage or value.

Pasting any of these materials into a consumer-grade AI tool, or even uploading them into an enterprise system without understanding its retention and reuse practices, may constitute an impermissible disclosure under Rule 1.6.

C. Informed Consent: Specific, Contextual, and Non-Delegable

Opinion 512 places significant emphasis on informed consent but also makes clear that not all consent is equivalent. The ABA cautions that "general, boiler-plate provisions" are insufficient. Consent must be specific enough for the client to understand:

- what information may be input,
- how the AI tool processes and retains data,
- whether the information may be reused or accessed by others, and
- what safeguards are in place to prevent disclosure.

This requirement is particularly important in real estate transactions, where clients may be sophisticated business entities but may be unaware of the mechanics of AI systems. Informed consent is not satisfied merely because a client is commercially savvy or technologically literate.

The Opinion further instructs lawyers to review and understand the AI tool's "Terms of Use, privacy policy, and related contractual terms." Delegating this review to IT staff or assuming that a tool is "safe" because it is popular or widely marketed is insufficient. However, the requirements may be satisfied by de-identifying data or using AI systems with confidentiality safeguards.

D. Internal Confidentiality Risks and Ethical Screens

Opinion 512 also recognizes an often-overlooked risk: internal disclosure. AI systems that pool data across matters may inadvertently expose information to lawyers or staff who

are ethically screened from a particular transaction. For real estate practices handling competing developments, confidential bids, or sensitive acquisitions, this risk is not theoretical. Firms must consider whether AI tools:

- segregate data by matter,
- respect ethical walls, and
- prevent cross-matter inference or access.

Failure to do so may compromise both Rule 1.6 and conflict-of-interest obligations.

E. Practical Safeguards for Real Estate Practice

While Opinion 512 does not mandate specific technical solutions, it strongly implies that reasonable safeguards are required. Best practices include:

- limiting AI use to firm-approved tools with known confidentiality protections;
- avoiding the input of unredacted deal documents into consumer AI platforms;
- de-identifying information where possible;
- obtaining informed client consent when required and documenting it; and
- addressing AI use and limitations in engagement letters where appropriate.

IV. Communication with Clients (Model Rule 1.4): When Disclosure Is Required

ABA Formal Opinion 512 takes a deliberately restrained approach to client communication regarding generative AI. The Opinion rejects both extremes: it does not require lawyers to disclose every instance of AI use, but it also does not permit silent reliance where AI meaningfully affects the representation. For real estate lawyers, who often operate under tight timelines and standardized workflows, the key ethical question is not whether AI was used, but whether its use is material to the client's decisions, risks, or fees.

Model Rule 1.4 requires lawyers to keep clients "reasonably informed" and to consult with clients about the "means" by which objectives are pursued. Opinion 512 emphasizes that this duty is context-specific, and that "client disclosure may be unnecessary" in many routine uses of AI. The ABA expressly rejects the notion that the use of AI is per se required to be disclosed.

A. Circumstances Requiring Disclosure or Consultation

Opinion 512 identifies several situations in which disclosure or consultation is ethically required. First, disclosure is mandatory where informed consent is required under Rule 1.6—that is, where client information is input into a generative AI tool that may retain, reuse, or expose that information. In such cases, communication is not optional; it is a prerequisite to lawful use of the tool.

Second, disclosure is required when the client asks about AI use or when outside counsel guidelines, lender requirements, or contractual provisions mandate disclosure. In commercial real estate practice, this is increasingly common with institutional clients and lenders that impose technology-use restrictions or reporting obligations.

Third, the ABA makes clear that consultation is required where AI use affects the basis or reasonableness of the fee. If AI materially reduces the time or labor required for a task, particularly in flat-fee or capped-fee arrangements, the lawyer may need to discuss how that efficiency affects the fee structure.

Finally, and most importantly for transactional lawyers, consultation is required when AI output will influence a significant decision in the representation, and the client would reasonably want to know whether the lawyer is exercising independent judgment or "deferring" to the tool.

B. What Constitutes a "Significant Decision" in Real Estate Practice

In real estate transactions, "significant decisions" are not limited to litigation strategy. They often arise quietly, embedded in drafting, negotiation, and closing advice. Examples include:

- advising whether to terminate or proceed during an inspection or due diligence period based on AI-generated risk assessments;
- recommending acceptance of non-standard estoppel, SNDA, or lender consent language that affects future transferability or financing;
- advising on title objections, curative strategies, or whether to insure over known defects;
- determining whether to waive conditions precedent or proceed with closing despite incomplete deliverables;
- advising on remedies posture—specific performance versus termination—where AI analysis of case law or market

norms plays a role.

In these contexts, the ethical issue is not that AI assisted the analysis, but whether the client would reasonably want to know that a machine-generated assessment materially influenced the lawyer's advice. Opinion 512 makes clear that a lawyer must not permit AI to substitute for professional judgment without the client's awareness.

C. When Disclosure Is Not Required

Equally important, Opinion 512 recognizes that disclosure is not required for routine or ministerial uses of AI that do not affect client decisions, confidentiality, or fees. Examples include:

- using AI for grammar or style suggestions;
- generating internal checklists or organizational aids;
- summarizing documents already reviewed by the lawyer;
- brainstorming alternative clause language where final judgment remains with the lawyer.

This distinction matters. Routine drafting assistance or internal efficiency tools do not transform the lawyer's role or the nature of the representation. Mandatory disclosure in such circumstances would add friction without improving client understanding or protection.

D. Engagement Letters as a Communication Tool

Opinion 512 identifies engagement letters as a "logical place" to address AI use and related expectations. Engagement letters can serve several important functions:

- disclosing the potential use of AI tools;
- reserving the right to use AI for efficiency while committing to lawyer review and verification;
- addressing confidentiality limitations and consent where appropriate; and
- clarifying how AI-related efficiencies affect billing.

Used properly, engagement letters allow lawyers to comply with Rule 1.4 proactively rather than reactively, reducing the need for repeated disclosures during fast-moving transactions.

E. Avoiding the "Delegation" Problem

A recurring concern in Opinion 512 is the risk that lawyers may appear to defer to AI rather than exercise independent judgment. Communication with clients plays a critical role

in avoiding this perception. Where AI is used to inform advice, the lawyer should be prepared to explain, not merely report, the basis for recommendations. This means framing advice in traditional professional terms: legal risk, market practice, lender requirements, and client objectives. AI may inform that analysis, but it must not replace the lawyer's explanatory role. Failure to communicate this distinction can undermine client trust and, in some cases, violate Rule 1.4.

Formal Opinion 512 does not impose an "always disclose" rule for AI use. Instead, it demands judgment. Real estate lawyers must communicate with clients when AI use affects confidentiality, fees, or significant decisions, and may remain silent when AI use is purely incidental and does not alter the representation. The ethical goal is not transparency for its own sake but ensuring that clients remain informed participants in decisions that materially affect their transactions.

V. Candor and Meritorious Contentions (Rules 3.1, 3.3, and 8.4)

ABA Formal Opinion 512 treats candor-related duties as a central ethical constraint on the use of generative AI. While these duties are most often discussed in litigation contexts, the Opinion makes clear that they are triggered whenever lawyers make factual or legal assertions in professional capacities, including contexts frequently encountered by real estate attorneys. Generative AI's propensity to produce fluent but false content presents a direct challenge to these obligations. The ABA warns that generative AI tools have already produced "citations to nonexistent opinions, inaccurate analysis of authority, and use of misleading arguments." For that reason, lawyers must "carefully review" AI-generated output to ensure that assertions made to a tribunal are not false. The Opinion emphasizes that the risk is not theoretical; it is already materializing in practice.

A. Rule 3.3: Candor Toward the Tribunal and the Verification Obligation

Model Rule 3.3 provides that a lawyer shall not knowingly make a false statement of fact or law to a tribunal. Generative AI complicates this rule by introducing a new category of error: hallucinated authority that is false, persuasive, and generated without an intent to deceive. Courts confronting this problem have begun to divide on whether the submission of AI-generated hallucinations constitutes a Rule 3.3 violation absent proof of intent.

Opinion 512 predates the emerging division among courts, and, consequently, does not provide meaningful guidance on this issue. Instead, the Opinion just emphasizes that lawyers

must carefully review AI-generated content before submission. Recent cases illustrate two distinct judicial approaches.

1. The Strict View: Any Hallucinated Citation Breaches Candor

Several courts have treated the submission of hallucinated authority as inherently inconsistent with the duty of candor, regardless of the lawyer's mental state. In *U.S. v. Hayes*, 763 F. Supp. 3d 1054 (E.D. Cal. 2025), defense counsel filed pleadings containing hallucinated citations and denied using AI. The court rejected that explanation as "not credible" and devoted extensive analysis to Rule 3.3, concluding that the duty of candor requires lawyers to verify every citation and that the act of submitting false authority itself was sufficient to establish a violation.

Similarly, in *Byoplanet International, Inc. v. Johansson*, 2025 WL 2091025 (S.D. Fla. July 17, 2025), counsel submitted multiple filings containing hallucinated citations, even after being put on notice of the problem, and continued to rely on hallucinated authority in responding to a show cause order. The court characterized the conduct as "repeated, abusive, bad-faith conduct," dismissed all pending cases filed by the attorney, imposed fee-shifting sanctions, and referred the matter for disciplinary review.

These decisions focus on outcome rather than intent: presenting false authority to a tribunal violates candor, regardless of whether the lawyer subjectively intended to mislead.

2. The *Mens Rea* View: Rule 3.3 Requires Knowledge (or Recklessness)

Other courts have adhered more closely to the text of Rule 3.3 and required proof that the lawyer knowingly, or, in some jurisdictions, recklessly, submitted false material. In *Garner v. Kadince, Inc.*, 571 P.3d 812 (Utah Ct. App. 2025), hallucinated cases prepared by a law clerk were submitted without verification. The court held that although counsel's conduct warranted sanctions, it "fell short of the level of intent required" to violate Rule 3.3 under Utah's formulation of the rule, which expressly includes recklessness. The court nonetheless imposed monetary sanctions and required reimbursement of opposing counsel's fees.

Likewise, in *Johnson v. Dunn*, 2025 WL 2086116 (N.D. Ala. July 23, 2025), a defense team filed pleadings containing five hallucinated citations. One partner admitted to using AI without informing co-counsel. The court characterized the conduct as "wholly inconsistent with the duty of candor," but declined to find a violation of Rule 3.3 because the false statements were not made knowingly. Even so, the court

sanctioned all three attorneys under Rule 11 principles, issued public reprimands, and ordered widespread disclosure of the sanctions to courts and disciplinary authorities. Hallucinated filings may not violate Rule 3.3 directly, but they remain subject to serious sanctions under other rules and procedures.

B. Rule 3.1: Meritorious Claims and Frivolous Positions

Rule 3.1 prohibits lawyers from asserting claims or defenses without a non-frivolous basis in law and fact. Opinion 512 implicitly links this duty to AI hallucinations by highlighting the risk that AI-generated arguments may appear plausible while lacking legal support. For transactional lawyers, Rule 3.1 concerns arise when AI is used to:

- assess remedies under a purchase agreement;
- evaluate the enforceability of restrictive covenants, options, or rights of first refusal;
- predict litigation outcomes to influence negotiation posture.

If AI output includes fabricated authority or misstates the law, reliance on that output may result in the assertion of positions that lack a good-faith legal basis. The ethical failure lies not in consulting AI, but in presenting unverified conclusions as legally sound.

C. Rule 8.4(c): Misrepresentation Beyond the Courtroom

Opinion 512 also implicates Rule 8.4(c), which prohibits conduct involving dishonesty, fraud, deceit, or misrepresentation. Importantly, this rule is not limited to communications with tribunals. Transactional real estate lawyers routinely make representations to third parties, including lenders, title companies, counterparties, and governmental entities.

If AI-generated content introduces inaccuracies into these representations, whether factual or legal, the lawyer may be exposed to Rule 8.4(c) concerns even if the misstatement was not intentional. Opinion 512's emphasis on careful review reflects an understanding that misrepresentation can occur through inattention as well as deceit.

D. Transactional Candor: Not Just a Litigation Problem

One of the most important insights for real estate lawyers is that candor obligations extend beyond court filings. Recorded instruments, certifications, and closing deliverables

often function as representations relied upon by third parties long after the transaction closes. AI-assisted drafting that introduces inaccuracies into these documents may result in cascading legal consequences, including malpractice exposure and insurer denials.

VI. Supervision (Rules 5.1 and 5.3): Policies and Training Are Ethical Requirements

Opinion 512 views generative AI as more than just a tool for individual lawyers; it considers it a practice-wide risk that demands oversight and management. This perspective is particularly important for lawyers who frequently depend on associates, paralegals, and similar professionals. The Opinion emphasizes that the ethical use of AI cannot be governed by informal practices or left to individual judgment—it requires structured governance, dedicated training, and thorough supervision.

Model Rule 5.1 imposes duties on lawyers with managerial or supervisory authority to ensure that a firm has measures in place giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct. Model Rule 5.3 imposes parallel duties with respect to non-lawyer assistants. Opinion 512 explicitly applies both rules to generative AI, emphasizing that lawyers must take proactive steps to regulate the selection, deployment, and use of AI within the firm.

A. The Duty to Establish Clear AI Policies

Opinion 512 states that lawyers with managerial authority must establish "clear policies" governing the permissible use of generative AI tools. This requirement reflects the ABA's recognition that the use of ad hoc or unsupervised AI presents systemic ethical risks. Such policies should address at a minimum:

- which AI tools are approved for use;
- which tasks are appropriate for AI assistance;
- what types of client information may be input;
- required review and verification procedures; and
- prohibited uses (such as unsupervised drafting of recorded instruments or reliance on AI-generated legal authority).

Without clear policies, firms may face inconsistent procedures, confidentiality issues, and verification errors, resulting in ethical breaches attributable to leadership.

B. Training as an Ethical Requirement, Not a Technical Luxury

Opinion 512 emphasizes that supervision includes ensuring

that lawyers and non-lawyers are trained on the capabilities and limitations of AI tools and on the ethical risks associated with their use. Training is not limited to "how to use" a tool; it must address how not to use it. In real estate practice, this includes training associates and paralegals to understand:

- that AI output must be verified against primary documents;
- that confidential deal materials may not be uploaded into unapproved tools;
- that AI-generated drafts are not final work product; and
- that responsibility for accuracy ultimately rests with the supervising lawyer.

Failure to adequately train staff may constitute a violation of Rules 5.1 and 5.3, even if no immediate harm results.

C. Supervision of Non-lawyers and Delegated Workflows

Transactional real estate practices often delegate significant responsibility to non-lawyers, particularly in areas such as document preparation, due diligence, closing coordination, and post-closing recording. Opinion 512 makes clear that the use of AI by non-lawyer assistants must be supervised with the same rigor as any other delegated legal task. If a paralegal uses AI to draft a deed, prepare a closing checklist, or summarize title exceptions, the supervising lawyer must ensure that:

- the AI tool used is approved and compliant with confidentiality requirements;
- the output is reviewed and verified by a lawyer; and
- the final responsibility for accuracy remains with the lawyer.

D. Third-Party Vendors and Outsourced Due Diligence

Opinion 512 also extends supervisory duties to third-party vendors, including AI providers and outsourced service firms. The ABA instructs lawyers to evaluate vendors with respect to reliability, security, data retention practices, proprietary rights, breach notification obligations, and the enforceability of contractual protections. This guidance has direct implications for real estate practices that rely on:

- title companies using AI-enhanced search or analysis tools;
- outsourced due diligence providers;

- data room and document management platforms with embedded AI features; and
- vendor-provided lease abstraction or portfolio analysis services.

E. Internal Confidentiality and Ethical Screens

Supervision also requires attention to internal firm controls. Opinion 512 recognizes that AI systems capable of aggregating data across matters may undermine ethical screens if not properly configured. Firms may represent competing developers, landlords, or bidders under conflict waivers with appropriate ethical walls. But if AI tools are trained or informed by data across matters, they may inadvertently expose sensitive information internally. Supervisory lawyers must ensure that AI tools respect matter-level segregation and ethical walls.

F. Governance Failures Are Ethical Failures

A critical takeaway from Opinion 512 is that ethical responsibility does not stop at the individual lawyer. Where firms fail to implement policies, training, and oversight, disciplinary exposure may attach to partners and managers even if a subordinate committed the underlying misuse. This means that AI governance must be treated as part of the firm's ethical infrastructure alongside conflict checks, trust accounting, and document retention policies.

VII. Fees and Billing (Model Rule 1.5): No Phantom Time, No Hidden Profit

ABA Formal Opinion 512 devotes significant attention to fees and billing, reflecting the ABA's concern that generative AI's most immediate ethical impact may not be confidentiality or candor, but how lawyers charge for their work. For real estate attorneys, who often work under flat fees, capped arrangements, or restrictive budgets, the advent of AI-driven efficiency presents both significant opportunities and notable ethical considerations.

Model Rule 1.5 requires that legal fees be reasonable, considering factors such as time and labor required, the novelty and difficulty of the issues, customary fees, and the results obtained. Opinion 512 makes clear that generative AI does not alter this standard. Instead, it clarifies how traditional billing principles apply when technology significantly reduces the time required to perform legal tasks.

A. Hourly Billing: No "Phantom Time"

The Opinion draws a bright line with respect to hourly billing. Lawyers may bill only for actual time spent, not for time that would have been spent absent AI assistance. Efficiency

gains belong to the client, not the lawyer. If AI allows a lawyer to draft, review, or revise a document more quickly, the lawyer may bill for:

- the time spent formulating prompts or instructions,
- the time spent reviewing and verifying AI-generated output, and
- the time spent revising, negotiating, or integrating the output into the transaction.

What the lawyer may not do is bill as though the task took longer simply because it once would have. Billing "phantom hours" undermines Rule 1.5 and exposes the lawyer to disciplinary risk.

B. Flat Fees and Value-Based Billing: Efficiency Can Create Unreasonableness

Opinion 512 also addresses flat and fixed-fee arrangements, cautioning that a fee may become unreasonable if AI reduces the work to the point that "little or no work was performed." While flat fees are not prohibited, lawyers must reassess whether the fee remains justified in light of the actual effort required. This does not mean that every efficiency gain requires a refund. Many flat fees reflect bundled services, risk assumption, availability, and expertise. However, where AI substantially reduces labor, particularly in standardized or repetitive tasks, lawyers should consider whether fee structures remain defensible and whether client expectations have shifted.

C. Charging for AI Tools: Overhead Versus Pass-Through Expenses

Opinion 512 draws an important distinction between embedded technology and matter-specific AI tools.

Embedded tools, such as AI-assisted features integrated into word processing or document management systems, are generally treated as overhead and may not be separately billed. By contrast, third-party AI tools that are:

- used specifically for a client's matter,
- billed on a per-use or per-matter basis, and
- not part of the firm's general infrastructure,

may be charged to the client as expenses, provided the charges reflect actual cost and are reasonable. Clients, however, may not be willing to incur these expenses.

In real estate practice, this distinction frequently arises with:

- AI-assisted lease abstraction services,
- portfolio analysis tools,
- enhanced due diligence platforms, and
- document review systems used for large transactions.

Lawyers may not use AI-related expenses as a profit center or mark them up without disclosure. Transparency and reasonableness remain the governing principles.

D. Training Time: Maintaining Competence Is Not Billable

Opinion 512 is explicit that lawyers generally may not bill clients for time spent learning to use AI tools that will be used across matters. Such training is part of maintaining professional competence. This means:

- time spent learning AI drafting tools,
- internal experimentation with prompts or workflows, and
- firm-wide AI training initiatives

are typically non-billable. A narrow exception may exist where a client specifically requires the use of a proprietary AI system and agrees to pay for related training, but such arrangements should be documented clearly and in advance.

E. Communication and Fee Transparency

Opinion 512 ties billing ethics back to communication duties under Rule 1.4. Where AI use materially affects the basis or reasonableness of a fee, the lawyer may need to consult with the client. Engagement letters are again the most effective tool for managing expectations. Engagement letters may:

- disclose that AI tools may be used to improve efficiency,
- clarify how efficiency affects billing,
- explain when AI-related expenses may be passed through,
- reserve the right to adjust fees if AI materially changes the scope of work,
- warn that fees may be higher if the client denies permission to use AI.

F. Bottom Line on Fees and Billing

ABA Formal Opinion 512 makes clear that generative AI does not change the fundamental bargain between lawyer and client. Lawyers are paid for judgment, expertise, and responsibility, not for keystrokes or elapsed time that no

longer exists. Ethical use of AI requires honest accounting of time, transparent treatment of expenses, and a willingness to reassess fee structures as technology reshapes the practice. Efficiency is a benefit, not a justification.

VIII. Conclusion: Ethical AI in Real Estate Is About Process, Not Prohibition

ABA Formal Opinion 512 does not ask real estate lawyers to choose between innovation and ethics. It assumes that generative AI will become embedded in legal practice and instead asks whether lawyers will govern that technology with the same discipline they apply to conflicts, trust accounting, and confidentiality. The Opinion's core message is neither alarmist nor permissive: AI may assist the practice of law, but it does not alter the lawyer's professional obligations.

Across all of the duties addressed in Opinion 512—competence, confidentiality, communication, candor, supervision, and fees—the unifying theme is non-delegable judgment. Competence requires understanding what AI can and cannot do and verifying its output. Confidentiality requires treating AI inputs as disclosures to third parties. Communication requires transparency when AI use affects client decisions, risks, or fees. Candor demands that AI-generated content never substitute for verified law or fact. Supervision requires firms to implement policies, provide training, and conduct oversight, rather than relying on informal norms. Billing requires honesty about time, value, and efficiency.

What Opinion 512 ultimately rejects is the idea that AI is a neutral shortcut. It is not. It is a powerful drafting and analysis tool that can magnify both good lawyering and bad lawyering. In the hands of a careful real estate lawyer, AI can improve clarity, consistency, and efficiency. In the absence of governance and skepticism, it can propagate errors faster than any associate or paralegal ever could. The ethical real estate lawyer's comparative advantage in an AI-assisted practice is therefore not speed. It is judgment: knowing when to rely on experience rather than output, when to slow down rather than accelerate, and when a "reasonable" answer generated by a machine is not good enough for a transaction that will bind parties for decades.

Opinion 512 does not require real estate lawyers to abandon AI, nor does it require them to master its technical architecture. It requires something far more traditional and far more demanding. It requires lawyers to remain lawyers. To

read what they sign. To verify what they file. To protect what they are entrusted with. To supervise those who work under them. And to charge for what they actually do. In that sense, Opinion 512 is not about artificial intelligence at all. It concerns professional responsibility in an era when technology makes it easier than ever to forget who is accountable. The answer, as the Opinion makes clear, has not changed. Responsibility still stops with the lawyer and nowhere else.

End Notes

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² All quotations are to ABA Formal Opinion 512 unless otherwise noted.