



# The Impact and Risks of Artificial Intelligence in Real Estate

AI and AI-Driven Vendors Can Deliver Efficiency,  
While Quietly Expanding Risk

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Artificial intelligence (AI) is rapidly transforming many industries, and the real estate industry is no exception. After all, AI can streamline operations, improve decision-making, and enhance customer experience all of which may help real estate businesses meet their growing needs while reducing costs. For data-intensive operations, from property valuation and investment analysis to tenant screening and property management, real estate businesses are turning to AI-powered tools that are easy to use and getting better all the time. However, the integration of AI in real estate is not without its challenges. It can pose significant risks, including the potential for AI bias, data protection, and user privacy.

AI bias can lead to discriminatory outcomes and legal liabilities for real estate owners, developers, and property managers. Employers, landlords, and other companies can get into legal trouble, especially if AI discrimination affects a protected class.

A protected class is a group of people with specific characteristics legally shielded from discrimination under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Fair Housing Act, The Americans with Disabilities Act, and other Federal and state laws. These characteristics, such as race, religion, sex, national origin, age, and disability, ensure equal treatment under the law, preventing unfair bias in areas like employment, housing, and services.

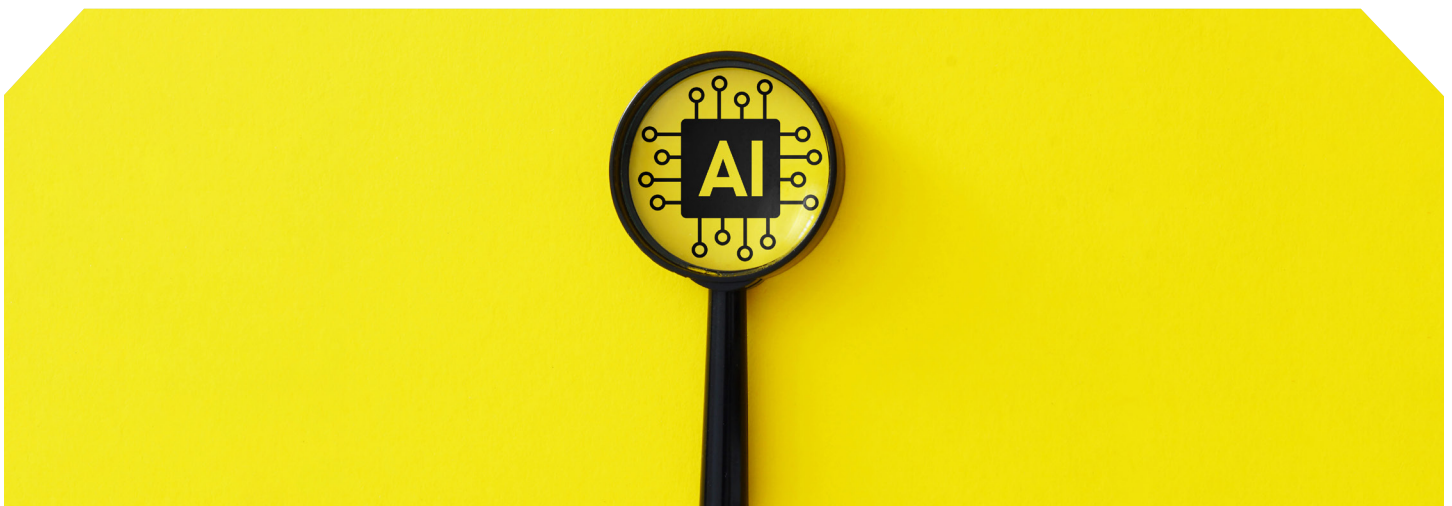
Data protection and user privacy have become more complex as AI becomes more widely used. The way data is used within the system means real estate companies have to go the extra mile to protect themselves from exposure, reviewing the way data is collected, used, stored, and deleted (if applicable), carefully vetting vendors to ensure good practices, and updating documentation and disclosures for transparency.

This white paper explores the risks of AI systems used in real estate, focusing on key areas such as hiring and tenant screening. It also provides actionable strategies for mitigating these risks, ensuring fair and equitable outcomes, and properly vetting AI vendors, while also examining how these emerging AI-driven risks intersect with traditional insurance programs, coverage triggers, exclusions, and underwriting assumptions that can materially affect a company's ability to transfer risk and respond to claims.

## UNDERSTANDING AI BIAS

AI bias<sup>1</sup> occurs when algorithms produce results that are systematically prejudiced due to flawed assumptions in the machine learning process. This bias can stem from various sources, including:

- **Data Bias:** AI models are trained on data, and if this data reflects historical or societal biases, the AI may perpetuate and amplify these biases.



1. "AI bias, also called machine learning bias or algorithm bias, refers to the occurrence of biased results due to human biases that skew the original training data or AI algorithm—leading to distorted outputs and potentially harmful outcomes."

[AI bias](#) - Source IBM

- **Algorithm Design:** The design of the algorithm itself can introduce bias, particularly if developers make assumptions that favor certain groups over others.
- **Human Bias:** The individuals developing and implementing AI systems may unconsciously inject their own biases into the process (most people inject their unconscious biases into their work).

## HISTORICAL BIASES AND BIASED DATA SOURCES

The data used to train AI models often reflects historical biases and societal inequalities. These biases can be embedded in various data sources, including:

- **Historical Hiring Patterns:** Past hiring practices that favored certain demographics (e.g., an AI program may determine that since CEOs were historically mostly older white men, it should favor those candidates). These biases can be reflected in the data used to train AI recruitment tools, leading to the AI program perpetuating these biases by prioritizing candidates with similar characteristics and continuing a loop of self-fulfilling prophesy. See the National Bureau of Economic Research Working Paper, [“Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination.”](#)
- **Credit Scoring Data:** Credit scoring models have historically been shown to disadvantage certain racial and ethnic groups due to factors such as redlining and discriminatory lending practices. AI systems trained on this data may unfairly deny housing or other opportunities to individuals from these groups. See the Consumer Financial Protection Bureau report, [“Data point: Credit invisibles.”](#)
- **Criminal Justice Data:** Data on arrests and convictions can reflect biases in law enforcement practices, leading to AI systems that unfairly target certain communities. See [ProPublica’s article, “Machine Bias,”](#) which discusses [risk assessment in criminal sentencing](#) for more information.
- **Tenant Screening Data:** Historical eviction data and other tenant screening information can reflect biases against certain demographic groups, leading to AI systems that unfairly deny housing to qualified applicants. See the [New York Times article, “How Automated Background Checks Freeze Out Renters.”](#)

## RISKS OF AI BIAS IN REAL ESTATE

### 1. Hiring Discrimination:

- **Risk:** AI-driven recruitment tools are increasingly used to screen job applicants in the real estate sector. If these tools are trained on biased data (e.g., historical hiring patterns that favor certain demographics), they may unfairly filter out qualified candidates from underrepresented groups. Real estate companies use these directly or, more likely, they hire vendors and hiring companies who use them. Employers must avoid using hiring technologies in ways that discriminate against people with disabilities. This includes when an employer uses another company’s discriminatory hiring technologies. [As outlined in](#) the U.S. Department of Justice, Civil Rights Division guidance on Algorithms, Artificial Intelligence and Disability Discrimination in Hiring.
  - In one [widely reported example](#), Amazon discontinued an internal AI recruiting system after discovering that the algorithm penalized résumés associated with women.
- **Liability Implications:** Such practices can lead to violations of Title VII of the Civil Rights Act, as demonstrated in the case of [Moblely v. Workday Inc., 3:23-cv-00770 \(N.D. Cal. 2023\)](#). This case represents one of the first instances addressing legal ramifications of AI in hiring, raising concerns about compliance with Title VII of the Civil Rights Act. The lawsuit claims that Workday’s AI tools filtered out qualified candidates based on race, age, and disability.
- **Mitigation Strategies:**
  - Establish clear, objective hiring criteria. This should be written and given to all hiring managers and vendors
  - Educate employees on anti-discrimination laws.
  - Conduct regular audits of hiring algorithms.
  - Ensure transparency in decision-making processes.
  - Provide bias-awareness training to hiring teams.
  - Use diverse data sets to train AI algorithms.
  - Engage with diverse communities to improve outreach.
  - Insist on indemnity from third-party screening services.

### 2. Tenant Screening Discrimination:

- **Risk:** AI-powered tenant screening tools can perpetuate housing discrimination if they rely on biased data or algorithms.



For example, if a tool uses historical data that correlates certain demographic groups with higher eviction rates, it may unfairly deny housing to qualified applicants from those groups. Again, some real estate companies may be using these through a vendor without even realizing it, opening themselves up to discrimination lawsuits and other liability. Algorithmic decision systems used in tenant screening or property management may implicate the [Fair Housing Act](#) if they create discriminatory outcomes or disparate impact.

- **Liability Implications:** Discriminatory tenant screening practices can violate the Fair Housing Act regardless of whether AI is involved. The case outline in [Louis, et al. v. SafeRent Solutions, et al.](#) illustrates this risk. The company was alleged to have used an algorithm that assigned lower scores to Black and Hispanic rental applicants and discriminated against applicants with housing vouchers. While specific case details may vary, this example highlights the potential for legal action.
- **Mitigation Strategies:**
  - Ensure transparency via established, published criteria used for tenant selection and given to all tenant screening vendors and managers.
  - Focus on objective, non-discriminatory criteria for tenant selection.
  - Regularly audit tenant screening algorithms for bias.
  - Comply with fair-housing laws and regulations.
  - Avoid using algorithms that take protected characteristics into account.
  - Implement regular audits to identify and address potential biases.

## OTHER AI-RELATED RISKS

### Privacy Risk and Data Protection

Everyone has privacy concerns surrounding personal data, particularly when it is used or collected without permission. And while online forms for employment or tenant screening ask for consent to use the data and outline privacy policies, some AI technologies tap into personal data beyond the information keyed into the fields on the form (after all that's where the power of machine learning and lightning-fast processing come in). These systems may cross-reference the name, birthdate, and address with databases across the Internet, opening the door to compromised privacy and sharing of personal details without approval. The system reports back with its recommendations, but the steps it took to get there are anything but transparent. It's not surprising, when we consider that users engage these systems so they can skip these steps.

### Behind-the-Scenes Data Sharing

Some AI platforms gain access to information by using data-sharing agreements that may be opaque even to the vendors. Sometimes data is harvested, processed, and sold, causing individuals to lose privacy or worse, be subjected to profiling, targeted ads, or even identity theft. Using such systems can put a company's trusted name at risk with consumers as well as potential employees. Privacy matters to everyone.

### Concerns About Biometric Data Use and Storage

Breach of biometric data is considered more severe than other kinds of data breaches because a person's biometric data (generally) cannot be changed like a phone number, password, or social security number. It may seem obvious, but reducing the amount of biometric data collected and stored can help protect a real estate business from risk. Surveillance systems have grown more common and biometric data including fingerprints and facial recognition can be recorded and used in AI systems. Consider that the use of biometric data may raise privacy concerns, since, if it is compromised, it can't be changed like a password. Therefore, it is important that systems requiring biometric authentication store any collected information under strict protection since it is a great target for identity thieves, as well as deepfakes and other misuses.



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#### MITIGATION STRATEGIES:

- Reassess data collection and management practices to ensure alignment with both ethical standards and legal requirements.
- Seek out AI systems that hold data captive and don't expose it to the wider Internet.
- Enhance the privacy policy, and spell out just how users' data is managed, requiring full review of the policy before any form is submitted.
- Work with vendors that provide information on data usage, and ensure your users understand how their information is to be managed.
- Set up opt-in mechanisms to ensure mutual understanding of how information will be used.
- Establish processes that delete data and share it as policy with all users.

#### VETTING AI VENDORS

To mitigate the risks of AI bias, real estate companies must carefully vet AI vendors and ensure that their systems are fair, transparent, and compliant with legal requirements as the company will generally be liable for the vendor's negligence. Key considerations include:

- **Open Model:** Vendors should be transparent about the design and functionality of their AI models, allowing for scrutiny and evaluation.
- **Third-Party Audits:** Vendors should undergo regular third-party audits to assess their AI systems for bias and ensure compliance with ethical and legal standards.
- **Warranties and Insurance:** Vendors should provide warranties and insurance coverage to protect against the financial risks associated with AI failures and bias.
- **Data Sources and Training Methods:** Vendors should be transparent about the data sources used to train their AI models and the methods used to mitigate bias.
- **Explainability:** Vendors should be able to explain how their AI systems make decisions, allowing for accountability and transparency, and so anyone deposed on a discrimination case can explain the process.

#### INSURANCE COVERAGE IMPLICATIONS: AI BIAS AS A TRADITIONAL CLAIM WITH A MODERN TWIST

The rise of AI-driven discrimination lawsuits presents novel challenges, but at their core, these cases often fall within the scope of traditional insurance coverage. The *SafeRent* and *Mobley v. Workday Inc.* cases, along with the EEOC's action against *iTutorGroup*, illustrate how AI bias can manifest in hiring and tenant screening, leading to claims of discrimination and violations of protected-class status.

Many companies don't even know how these tools work or what data they draw from, but this lack of knowledge won't guard companies from discovery, depositions, and liability for using these tools. The fundamental principle is that AI should be treated as just another person or thing that can make mistakes and for whom the company and supervisor are ultimately liable.

Insurance is key for covering these claims and despite the new set of facts involving AI, these claims are still very similar to their traditional counterparts:

- **Employment Practices Liability Insurance (EPLI):** This policy covers claims of discrimination, harassment, and wrongful termination and can include third-party discrimination coverage, if purchased. If an AI-powered hiring tool is found to have discriminated against a job applicant, the employer's EPLI policy may cover the resulting legal costs and damages the same way it would for a traditional claim.
- **Directors and Officers (D&O) Liability Insurance:** This policy protects the directors and officers of a company from liability for their actions in managing a company, joint venture, etc. If a company's AI systems are found to have caused harm to tenants or employees or just cost the company money, the directors and officers may be sued for mismanagement by partners, investors, and/or shareholders, and their D&O policy should cover their legal costs and damages regardless of the additional factor of AI.
- **Professional Liability / Errors and Omissions (E&O) Insurance:** This policy covers claims of negligence or errors in the provision of professional services. If a real estate company uses an AI-powered tenant-screening tool that makes a mistake and denies housing to a qualified applicant, the company's E&O policy may cover the resulting legal costs and damages.
- **Cyber Risk Insurance:** This policy covers losses and liabilities arising from cyber incidents, such as data breaches, hacking, and malware attacks. If an AI system is hacked or compromised, leading to the theft of sensitive data or the disruption of business operations, the company's cyber insurance policy may cover the costs of data recovery, incident response, legal fees, and regulatory fines. The trigger would be a confirmed cyber incident that causes financial loss or liability. Despite the name, this coverage is less likely to be involved in an AI bias case than some of the other lines of coverage.
- **ERISA (Employee Retirement Income Security Act) Bonds and Fiduciary Liability Insurance:** ERISA could come into play if AI is used in ways that impact employee benefits or retirement plans. For example, if an AI system is used to make decisions about employee eligibility for benefits and that system is biased, leading to certain employees being unfairly denied benefits, the company could face ERISA claims. The trigger would be a lawsuit filed by employees alleging that the company violated ERISA by using a biased AI system to make decisions about their benefits.
- **General Liability Insurance:** This policy covers claims of bodily injury or property damage caused by the company's operations. In some cases, smart technology can cause injuries, so it's important to make sure these policies don't have overly broad cyber risk exclusions.

It's important to note that insurance coverage is not always guaranteed. Insurers may argue that certain exclusions apply, such as exclusions for intentional acts or violations of law. However, policyholders can argue that the AI's actions were unintentional or that the company took reasonable steps to prevent discrimination.

As AI becomes more prevalent in the real estate industry, it's crucial for real estate companies to review their insurance policies and ensure that they have adequate coverage for AI-related risks. They should also work with their insurance brokers to understand the potential exclusions and limitations of their policies.

## CONCLUSION

As AI continues to permeate the real estate industry, the concerns around bias, data security, privacy, and related risks demands careful consideration. Custom House Risk Advisors, with its deep experience in real estate, insurance, and technology-related claims, is uniquely positioned to help organizations navigate these emerging challenges. Our independent consulting approach allows us to provide unbiased risk assessments, insurance program reviews, and claims management strategies tailored to the specific needs of real estate owners, developers, and property managers. We encourage you to contact us with any questions about AI risks and the implications for your risk management program. ■