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The Federal Aviation Administration (FAA) has been playing catch-up with the developers and manufacturers of "drones," a term those in the media have grown fond of using, or unmanned aircraft systems (UAS)/unmanned aerial vehicles (UAV), the term preferred by those in the industry. Much excitement has been generated in the commercial real estate space and other industries by all of the possible cost-effective commercial uses for drones and their remarkable capacity for videos and aerial photos.

As a general statement, however, the FAA does not permit the use of drones for commercial purposes absent express authorization. The FAA has taken such an aggressive stance in prohibiting commercial drone use that several business entities have forbidden the use of drone-taken video or photos, even though such usage is **not** banned. Several large organizations, like NRT, the largest residential brokerage company in the U.S., have expressly prohibited their members from both utilizing drones for commercial purposes (which is banned by the FAA absent express authorization) and from even **using** video or pictures shot by drones in their marketing materials (which is not regulated by the FAA). The National Association of Realtors is now lobbying the FAA in hopes of obtaining approval for its members to use drones as a part of marketing properties.

Many drone users put their video and pictures online – e.g., the [DIY Drones](#) user group, which has 55,000 members. Thousands of consumer drones are sold each month. While intellectual property laws may limit the use of online drone videos and photos for commercial purposes absent express consent, such usage is not regulated by the FAA.

The FAA issued a policy statement in 2007 that drones fall under its definition of regulated "aircraft" that it regulates. There is an exception for model aircraft operated for purely hobby purposes but this exception "specifically excluded use by persons or companies for business purposes." Thus, flights of a drone for a business purpose, or that was incidental to a business purpose, would not be a

hobby or recreational flight and would be subject to the FAA prohibition on utilization of drones for commercial purposes.

In the 2012 FAA reauthorization legislation, the FAA was directed to come up with a plan for regulating drones by September 20, 2015. Don't count on those regulations to actually be implemented and in place by that date. The FAA started out with a model aircraft rule, so clearly this is going to take a significant length of time to work out.

As of 2013, more than 40 states were contemplating imposing state regulatory requirements on drones and six states have approved regulations. Texas regulations permit the use of drones by "a Texas licensed real estate broker in connection with the marketing, sale or financing of real property" but this does not override the current FAA ban.

Caution remains the prudent course of action, notwithstanding the pent up enthusiasm and demand to put drones into the skies for use in marketing commercial real estate.

Thompson Coburn's lobbying and transportation practices in Washington D.C. are actively monitoring, shaping and educating Congress and industry representatives on the strong desire by the commercial real estate community, and others, to obtain swift, balanced and practical regulations from the FAA that will accommodate the use of drones in marketing commercial real estate and related activities.

The FAA in 2011 originally projected that as many as 30,000 drones would be flying by 2030. It has since reduced that prediction to 7,500 commercial drones flying by 2019. Let's hope so.

For up-to-date information on drones and UAS regulations, please contact:

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