

Drone Use by Commercial Building Owners

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Owners and buyers of commercial buildings are increasingly using drones –also known as unmanned aircraft systems (UAS)—to inspect roofs and other exterior elements of buildings. In addition to making it easier to access the exterior, drones can reduce the need for inspectors to conduct activities on the roof and potentially damage the membrane, thereby affecting the roof warranty. Insurance companies frequently rely on drones to inspect the insured premises before issuing policies, as well as to assess damage caused by casualties.

Drones may also be appropriate to inspect a dangerous area, slippery area, inaccessible roof, area too close to electric wires, narrow area, or an area with weakened roof materials. They can also perform thermal imaging to detect locations of heat loss or A/C loss. Drones can take still photographs (automated to occur with any desired frequency), as well as videos.

While there are numerous benefits to using drones, commercial building owners need to understand the many rules and regulations surrounding drones, as well as the important considerations when hiring a drone inspection service or including a drone inspection right in a real estate contract.

FAA Regulations

The Federal Aviation Administration (FAA) has issued regulations for the use of small drones (under 55 pounds) that are typically used for these inspections. The operator is required to have an FAA Part 107 license, called a remote pilot certificate with small UAS rating. License holders must be at least 16 years old and must pass an FAA-approved UAS knowledge test. Even pilots holding a license to operate manned aircraft must take an FAA-approved UAS online training course to qualify for drone operation.

Regulations also require each drone to be registered, with a serial number placed on the drone. The cost of the license and drone registration are relatively nominal. Drones can be flown strictly for recreational or hobby purposes without a license, but drone registration is still required.

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Drones may be flown in daylight (defined as the time between 30 minutes before sunrise and 30 minutes after sunset), but night flying is permitted only if the drone has anti-collision lighting. The drone must be flown within the sight of the operator at all times. If the drone has “First Person View” or similar technology that allows the pilot to see on a smart device what a drone’s camera sees, the pilot must still have a visual observer keeping the drone within unaided sight (e.g., not using binoculars or other vision aids). The FAA also requires minimum weather visibility of three miles from the pilot during drone operation.

The maximum altitude a drone may legally fly is 400 feet, unless operated within 400 feet of a higher structure. Drone speed must not exceed 100 miles per hour. Flights over other people are not permitted unless those people are involved in the drone’s operation. Drones can have payloads attached, so long as they are adequately secured and do not affect the flight characteristics or controllability of the drone.

The pilot cannot operate more than one than one drone at a time, nor operate it in a careless or reckless manner, and must always avoid manned aircraft. Drones cannot be operated from moving vehicles unless flown in a sparsely populated area and not used for the transportation of property for compensation or hire.

The FAA has the right to inspect drones upon request. The pilot is required to report to the FAA any injuries caused by drone use, as well as any property damage caused by a drone that costs over \$500.

The FAA may grant waivers from many of its regulations if the pilot demonstrates that its operation will provide a level of safety at least equivalent to the restriction sought to be waived.

Florida Regulations

The State of Florida also has laws regulating drone use. Flights in the vicinity of certain critical infrastructure facilities are prohibited. These include power stations, chemical plants, mines, natural and propane gas facilities/ pipelines, above-ground oil and gas pipelines, and cellphone towers. The term “vicinity” is defined as over the facility, coming into contact with the facility, or operating within a distance of the facility that is close enough to interfere with its operation or cause a disturbance.

Florida law precludes the use of drones in law enforcement investigations unless a warrant is obtained, or the drone is being used to view something that is already observable at ground level from a lawful location. Florida also prohibits drone use on state-owned land without prior approval of the Florida Department of Agriculture & Consumer Services.

Florida’s drone laws also protect the privacy of Florida residents, and prohibit the use of drones to perform photographic or video surveillance except in specific circumstances. These do not, however, prohibit the use of drones in the following cases:

- To counter a high risk of terrorism if the U.S. Department of Homeland Security credibly determines such a risk to exist.
- Pursuant to a search warrant.
- If a law enforcement agency has reasonable suspicion that swift action is needed to prevent loss of life or serious property damage, to prevent the imminent escape of a suspect, to prevent the destruction of evidence, or to search for a missing person.
- By a person engaged in a licensed business if used only to perform reasonable tasks associated with that business (excluding the types of activities in which private investigators may engage in order to obtain private information about targeted individuals).

- By a government property appraiser for purposes of ad valorem taxation.
- By a utility company for purposes of inspection of its facilities.
- For aerial mapping or cargo delivery in compliance with FAA regulations.
- To capture images necessary for the safe operation or navigation of a drone otherwise being used for lawful purposes.
- By a communications service provider for routing, siting, installation, maintenance or inspection of its facilities.

Local Ordinances

Even some local governments have elected to adopt ordinances regulating drone use. For example, Lake County prohibits drone operation on County land without permission. The City of Orlando prohibits drone operation within 500 feet of City buildings, schools, parks and venues without permission.

If you are considering operating (or hiring a contractor to operate) a drone in any local jurisdiction, make sure you verify whether that jurisdiction has any additional regulations that must be considered.

Considerations When Hiring a Drone Inspection Service

Some drone inspection services use one-page proposals that merely describe the scope of services and state the fee. It is better to enter into a more formal and comprehensive contract that includes the following minimum information and requirements:

- The operator's FAA license number.
- The scope and cost of services.
- The type or format of report to be delivered to the owner, including a deadline for delivery.
- Whether the drone operator owns the photos and videos taken (i.e., has a copyright on them), with a license to use them being granted to the owner, or whether the owner is deemed to own them (some operators take the position that, like other photographers, they own the images).
- Whether the operator can use the images for any other purpose.
- Whether the operator agrees to archive the digital images and for how long they will be accessible to the owner.
- The amount of any deposit required by the operator, as well as the conditions governing its refundability.
- Whether the contract is assignable by the owner.
- A representation that the operator is (and will remain) in compliance with all applicable governmental requirements.
- An obligation for the operator to maintain for the benefit of the owner (as additional insured) general liability and property damage insurance with acceptable limits, with evidence of the insurance being furnished to the owner.
- An obligation for the operator to indemnify the owner against any and all liability arising directly or indirectly from the operator's activities (including reasonable attorneys' fees), and to promptly report any incidents that could potentially trigger such liability.
- The legal and equitable remedies in the event of breach.

Real Estate Transactions and Drone Inspections

A buyer who wants to inspect a building by drone should obtain the prior written consent of the seller if there is any question whether the purchase contract permits the buyer to perform inspections by drone. In these cases, the contract with the operator should include the seller as a party benefitted by the insurance and indemnity provisions of the contract.

Like any other contracts, those applicable to drone inspection services are subject to negotiation. If you are a building owner, buyer or property manager presented with such a contract, you should seek the advice of an experienced attorney before signing on the dotted line.

Gary M. Kaleita is a shareholder at Lowndes and has been certified by The Florida Bar as a specialist in real estate law since 1993. He is also a member of the firm's Commercial Leasing Group. If you have questions about the contents of this article, please contact Gary at 407.418.6334 or gary.kaleita@lowndes-law.com or another member of the Commercial Leasing Group.