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Insights

ON YOUR RADAR? 10 REAL ESTATE RISK AREAS TO WATCH IN 2026

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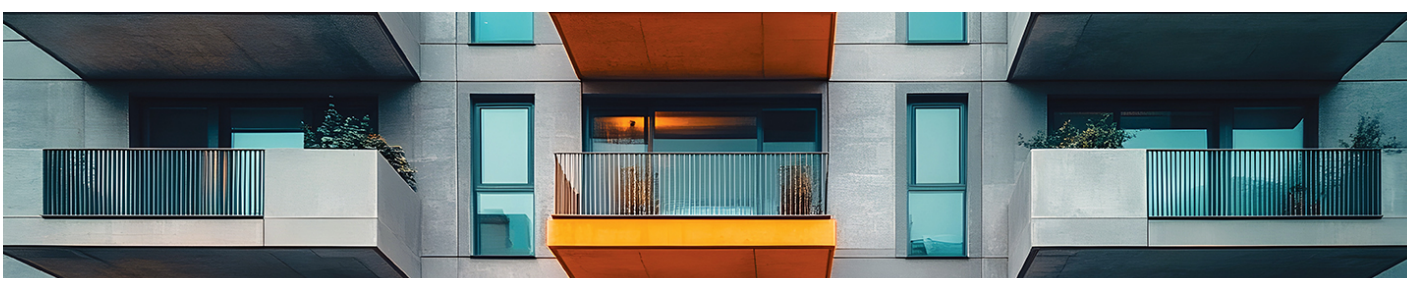
SUMMARY

In this report, we have outlined ten areas of real estate risk to have on your radar in 2026. Dispute activity is being driven by factors such as regulatory and legislative changes, ongoing financial pressures, environmental liability risks and infrastructure constraints around connectivity and power. Policy detail continues to shift in several key areas, creating considerable uncertainty for those in the sector.

While outcomes will turn on the facts in each case, the areas identified below are primed for an increase in disputes, as those in the property sector seek to navigate a more demanding, contentious and scrutinised operating environment. This report translates these areas of change into practical risk signals, so stakeholders can stress test projects and contracts, prioritise mitigation measures and approach 2026 with better visibility of potential risks.

RESIDENTIAL REFORM



The Renters' Rights Act 2025 received Royal Assent on 27 October 2025 and provides the most significant overhaul to legislation in the private rented sector ("PRS") for a generation.

The Act will come forward in three key phases:

Phase 1: Tenancy reform.

This involves the abolition of section 21 so-called “no fault” evictions and replacement of assured shorthold tenancies with assured (periodic) tenancies overnight on 1 May 2026. From that point, all existing and future assured tenancies will roll over indefinitely until terminated by either landlord or tenant. Landlords can only terminate in reliance on a reformed set of statutory grounds; tenants will be able to terminate at any time, on two months’ notice (unless a shorter period has been agreed). As of 1 May 2026, contractual rent reviews will be of no effect and rents can only be increased annually to ‘market rent’ (or lower) via a statutory notice procedure, which tenants have the right to dispute via tribunal proceedings. For all new tenancies, landlords will only be able to request a maximum of one month’s rent in advance, which means they will need to look at alternative affordability criteria (for instance greater reliance on guarantees). Existing tenancies providing for advance payments of more than one month’s rent will remain in effect.

Phase 2: PRS Database and Landlord Ombudsman.

Expected late 2026 onwards, this phase will require landlords to register with (and fund) a PRS Database, elements of which will be publicly accessible. After that, a PRS Landlord Ombudsman will be set up to provide dispute resolution services.

Phase 3: Standards and safety.

Awaab’s Law will be extended to the PRS and the government has consulted on plans to set Minimum Energy Efficiency Standards (EPC C or equivalent by 2030). Expected much later in 2035 or 2037, following consultation, the government will introduce a Decent Homes Standard.

Reports of smaller private landlords leaving the market are widespread, which creates an opportunity for owners of larger private rented portfolios to absorb demand. Rents are likely to be affected as the cost of additional administration on landlords, and the decreased security over future cash flow, need to be recouped. Providers of PBSA will be exempt from the 2026/2027 academic year onwards, provided they are registered with a government approved code of practice (similar to specified educational instructions under the former regime, which remains exempt). Other types of student accommodation will be caught by the Act.

As with all new legislation, and particularly legislation on this scale, this will be a ripe area for disputes. The Act is complex and there is so much still to come by way of secondary legislation. The good news is that landlords have some time to prepare. Possession claims are anticipated to take longer, but over time should benefit from the government’s commitment to digitising the County Court possession process by Spring 2027. There is also set to be a review of the First-tier Tribunal, but no commitment yet on timings and it is likely to be subject to tenant uptake of the right to challenge rental increases and how those cases are managed and determined.

DEVELOPMENT DISPUTES

As development activity continues into 2026, so too will claims relating to development constraints such as rights of light, mines and minerals and restrictive covenants. Developers should put in place robust risk mitigation strategies to avoid projects being delayed or reshaped by financial ransoms.

In the 2025 Bankside Yards decision - the first significant rights of light judgment since Beaumont v Florala (2020) – the judge refused an injunction despite an actionable interference, awarding damages instead. Bankside should give developers greater confidence that, although an injunction remains the primary remedy for rights of light interferences, it will not be granted as a matter of course. Accordingly, we anticipate a "business as usual" approach from insurers and in surveyor-led negotiations.

Bankside also clarified that damages should be calculated based on a hypothetical negotiation (commonly described as a profit share), not the widely used book value multiplier. Helpfully for developers, Bankside supports a starting point for profit share in the region of 10–15%, rather than the 30% previously often advanced by neighbours. That figure is then further reduced by apportioning it between all affected neighbours, which may result in a lower outcome than a book value based settlement.

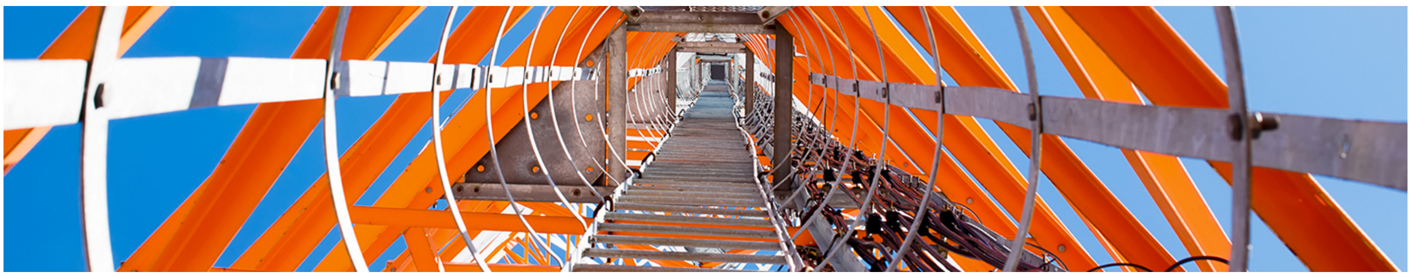
In practice, we expect surveyor led negotiations to continue to settle on a book value multiplier and for insurers to set excesses by reference to book value. While neighbours have increasingly pushed for profit share in negotiations, this trend may reverse if profit share outcomes fall below book value multipliers, at least in out of court settlements.

Good developer conduct remains critical and was one factor leading the judge to refuse an injunction. Overall, the Bankside judgment should help rebalance the perception of injunction risk created by Florala. It remains to be seen whether this will affect the number of issued rights of light claims and whether there is a shift in the remedies sought (i.e. whether neighbours will still seek injunctions even when they want a financial settlement, or issue a claim for damages from the outset). The court's approach to costs in Bankside (including the implications of the claimant not obtaining an injunction) may influence this; the costs hearing is scheduled for after February 2026.

We also expect continued activity in relation to restrictive covenants restricting building and development to historic profiles or otherwise, and a steady rise in claims and awareness of mines and minerals rights (and their ransom value) in the market. This includes threats of injunctions, and instances of certain businesses actively acquiring mines and minerals reservations to pressure developers.

Insurance will continue to play a vital role in mitigating these risks. Funders and pre let tenants are increasingly focused on these constraints, so policies should include bespoke drafting for their loss scenarios. The good news is that capacity in the rights of light market is improving, with new entrants increasing competition which should, ultimately, reduce premiums. While most claims will settle, where they do not, developers may seek to neutralise injunction threats by asking local authorities to use CPO powers or section 203 of the Housing and Planning Act 2016, routes we are already seeing considered more frequently after Bankside.

POWER CONNECTION ISSUES



One of the most pressing challenges for real estate developers, landlords and tenants is the delay in obtaining electricity connections, which has become critical as rising demand for power outpaces the networks' capacity to efficiently deliver new connections.

The scarcity has been created by the transition to net zero, the proliferation of data centres and other large demand customers in geographical clusters, electric vehicle charging requirements, rules against investing ahead of need and the electrification of heating systems, all of which have placed unprecedented strain on regional distribution network operators' ("DNO") distribution networks.

Assuming planning permission is in place, a connection offer with a committed capacity and connection date transforms a site into a genuinely deliverable and lettable asset, Once a connection is obtained, protecting its value to the freeholder/ landlord is critical. providing certainty to prospective tenants that their operational requirements can be met. A secured electricity connection with adequate capacity can significantly enhance capital value, slash void periods and deliver competitive advantage in attracting quality tenants, particularly in power-intensive sectors such as manufacturing, technology and life sciences.

The infrastructure itself requires substantial capital investment and lengthy lead times, making early DNO engagement essential. This engagement is becoming increasingly complex as DNOs reform the demand connection process, including removing developments that fail to progress against connection queue qualification criteria and development milestones.

For those who are removed from the connections queue or de-prioritised in favour of more advanced projects, a challenge to aDNO decision will likely be difficult, expensive and time-consuming. Beyond the DNO's complaints procedure, recourse is to Office of Gas and Electricity Markets ("OFGEM", the energy regulator for Great Britain) and potential judicial review challenge to any adverse OFGEM decision. The more practical risk mitigant is to structure demand projects to satisfy the requirements of the connection offer process, select points of connection to avoid constrained areas where practical, land assembly, planning strategy, resource commitment and a flexible approach (e.g. contemplating non-firm capacity offers and phased capacity provision).

Once a connection is obtained, protecting its value to the freeholder/ landlord is critical.

Ensuring capacity and connection reverts back to the landlord on tenant exit allows the landlord to offer meaningful power on re-letting, underpins headline rents and reduces void periods. Otherwise, a tenant could "land-bank" capacity or allow it to lapse, forcing a new occupier into expensive reinforcement or flexible/ curtailed connections. Reversion also lets a landlord re-cut the site capacity pie (due to, for example, intensification, subdivision, or a change from light industrial to data centre/EV logistics), move assets or trigger reinforcement on its own timeline, rather than negotiating with a former tenant.

Lenders and prospective buyers may probe whether usable capacity sits with the asset-owning entity. Evidence that capacity and grid rights revert on termination supports valuation, reduces conditionality at exit and avoids price chips. If capacity automatically reverts (with technical records and consents), a new tenant can step into supply with minimal de-energisation risk, avoiding deemed rates, prolonged outages or costly temporary generation.

Landlords should therefore ensure that leases require the tenants to assign/novate all connections, capacity and export rights (and any substation/wayleave interests) to the landlord on expiry/termination, with a deemed attorney/step-in if the tenant does not cooperate.

BUILDING SAFETY

The impact of the Building Safety Act 2022 (the "BSA") continues to grow in terms of further legislation and its practical consequences for property owners and the construction industry.

With thousands of buildings still awaiting remediation, building safety legislation is clearly still at the forefront of the government's priorities. We expect it to remain an active area in 2026.

The government's update to the Remediation Acceleration Plan set out priorities for 2026, including to fix buildings faster, and contained a target that by the end of 2029, every building with storeys over 11m in height with unsafe cladding will either have been remediated or have a date for completion, otherwise landlords, building owners and those legally responsible for remediation works will face penalties. The government's focus on the timetable for remediation and the obligation to remediate, will likely accelerate remediation works and may prompt claims against original supply chains as those responsible for the remediation works look to recover costs from those involved in the original works. The Supreme Court's 2025 decision in BDS v URS confirmed that developers can bring onward claims to fund meeting their own obligations and hold those parties responsible to account. Against this backdrop, we anticipate there will be further judicial clarification on Building Liability Orders (BLOs) and Building Information Orders, including the process and procedure for obtaining these orders, and the circumstances in which it is just and equitable to award BLOs.

The anticipated increase in claims against supply chain parties will likely also include further claims relating to (retrospective) liability for construction products. This is a new legal remedy introduced by the BSA.

In 2026, the Supreme Court will hear two significant appeals regarding the BSA's retrospectivity, namely whether remediation contribution orders apply to costs incurred before 28 June 2022 (Triathlon) and whether the BSA prevents recovery of professional costs incurred before 28 June 2022 through service charge (Adriatic Land). The Court of Appeal will also hear the appeal of Almacantar Centre Point Nominee No.1 Ltd and another v De Valk and Others, which raises important legal questions concerning the interpretation of leaseholders' statutory protections in relation to service charge recovery including the meaning of "cladding remediation".

Regulatory changes will also put an increased administrative and financial burden on building owners:

- Regulations come into force on 6 April 2026 concerning evacuation plans for residents of specified residential buildings in England whose ability to evacuate without assistance may be compromised. Landlords, building owners and managing agents should review evacuation strategies, update risk assessments and adopt a tailored approach to evacuation plans that reflects the building design and the needs of residents.

- Second staircases will be mandatory from 30 September 2026 in all new residential buildings with storeys over 18m in height in England, affecting building design and (potentially) viability.

- The Building Safety Levy comes into effect on 1 October 2026 for residential buildings with over 10 dwellings or over 30 dwellings for PBSA, with certain exemptions including social housing, hospitals and care homes. Payable by developers to local authorities, the amount of the Levy will vary by local authority and the amount of additional floorspace created.

COMMONHOLD

In March 2025, the government published the Commonhold White Paper, setting out a proposed new model for homeownership in England and Wales. The message was clear: commonhold can and should become the default tenure for shared residential blocks and mixed-use developments.

The Commonhold and Leasehold Reform Act 2002 first introduced commonhold, but uptake has been negligible. Fewer than 20 commonhold schemes have been established in England and Wales since 2002, with leasehold tenure remaining dominant. What has changed? According to government officials, a growing political consensus and sustained pressure from leaseholders have combined to create momentum for making commonhold the default tenure. The White Paper aims to move the conversation beyond the ‘feudal’ leasehold system and towards a more owner-led framework.

Inside the Commonhold Model: Governance and Management

The government’s intention is to create a democratic model of ownership in which a community of homeowners manages their building collectively. Long leaseholders would become “unit owners” who share governance and expenditure through a commonhold association, with the aim of increasing accountability and providing direct recourse to decision-makers.

A commonhold association would be a company limited by guarantee, with all unit owners as members. Unit owners would elect directors or engage professional managers to run the association, which would own and manage the building’s common parts. Each association would operate under a Commonhold Community Statement — a rules-based framework governing management, budgets and decision-making — with amendments requiring approval from 75% of unit owners.

Directors of the commonhold association would assume responsibilities typically performed by a freeholder or managing agent. This would include obligations required under the Building Safety Act 2022, such as acting as the Principal Accountable Person, and preparing an annual budget for approval by unit owners. In mixed-use buildings, the association would be able to divide the building into sections to facilitate differentiated management of residential, commercial and other areas.

The Road Ahead: Bill Timing and Consultations

A draft bill was expected in the second half of 2025; however, as we enter 2026, it appears to have slipped from the legislative agenda. The government has reiterated that there will be ample opportunity for pre-legislative scrutiny, including multiple consultations focused on exemptions and transitional arrangements.

We will continue to monitor developments during 2026. In the interim, policy attention may remain on strengthening the leasehold system, as evidenced by recent consultations, including the July initiative on "strengthening leaseholder protections over charges and services."

BUSINESS RATES

The Autumn Budget 2025 included a package of business rates measures designed to support businesses in England.

The last business rates revaluation came into effect on 1 April 2023, reflecting ratable values ("RVs") as at 1 April 2021. From 1 April 2026, a new rating list will be published, reflecting RVs calculated at 1 April 2024.

A key change which will affect a large number of businesses will be the government's new approach to Retail, Hospitality and Leisure ("RHL") businesses. There are new permanently lower multipliers for RHL businesses with RVs of below £500,000, which will be set at 5p below the national multipliers. Whilst this will provide some welcome relief for RHL businesses that have faced many headwinds and rising costs over recent years, the government is intending that these cuts are paid for by increased rates elsewhere. In particular, the multiplier for all properties (RHL or otherwise) with RVs over £500,000, representing about 1% of properties, will be increased.

Although the Chancellor has presented this as a cost on the "online giants", in reality the higher rate will be borne across all business sectors, including those ratepayers with a traditional bricks and mortar presence (including, for instance, supermarkets and anchor tenants in shopping centres), not just the online retailers.

Although the multipliers for RHL businesses have decreased, analysis from industry groups suggests that hospitality businesses will still ultimately face much higher business rates bills, due to the support measures introduced in response to the COVID-19 pandemic coming to an end. The chancellor has confirmed that she is looking to provide additional support to pubs, but no details have been announced at the time of writing.

All eyes will be on how these changes will reshape not only the viability of smaller, high-street businesses but also the sustainability and growth of larger occupiers such as datacentres and logistics sites.

PFAS

The potential risks to the environment and human health posed by Per- and Polyfluoroalkyl Substances ("PFAS") have come under ever greater scrutiny since the movie "Dark Waters" brought them to the attention of a global audience.

PFAS have been widely used in consumer and industrial applications for many years due to their strong chemical bond which resists chemical attach, withstands high temperatures and has oil and water repellent properties, all of which have contributed to their nickname 'forever chemicals'. Their use in firefighting foams, agricultural fertilisers and manufacturing operations means there are many sites across the UK with heavy concentrations of PFAS present, and likely migration of PFAS through surface water, groundwater and waste water treatment systems. Previously, these substances did not always show up in testing and so many older Phase II site investigations may not reveal the full picture. Where PFAS is present on a site, and may have migrated off-site, the costs of remediation can be difficult to quantify, given the unique features of PFAS. Obtaining insurance policies to cover the costs of remediation of PFAS-contaminated sites and/or the migration of PFAS off-site can be difficult, but not impossible.

The UK Government, in its recently published Environmental Improvement Plan, has committed to publish a "PFAS Plan" in 2026, which will set out a range of regulatory and non- regulatory interventions, measures and initiatives with specific actions and delivery milestones. The Environment Agency will also provide advice, guidance and tools next year to support the management of PFAS at contaminated sites on an ongoing basis in response to contamination becoming apparent.

The Environment Agency already has the power, under Regulation 61 of the Environmental Permitting (England and Wales) Regulations 2016, to serve notices on operators of permitted facilities (e.g. wastewater treatment systems) requesting information be provided to them. The Environment Agency has been using this power, and is likely to continue to do so, to gather information on sites where there is suspected high levels of PFAS, to inform any potential enforcement action.

Real estate investors and developers should be wary of potential disputes. The Environment Agency may vary permits to strengthen testing and monitoring for PFAS and where operators are not complying with notices or permit conditions, they may be subject to enforcement action. There is also a risk of tortious claims in negligence and trespass from third party landowners regarding the escape of PFAS onto neighbouring land. Insurance may be procurable, depending on the knowledge of the presence of PFAS.

TELECOMS

Telecoms disputes continue to keep the courts and tribunals busy, with a number of notable decisions handed down in 2025, at both first instance and appeal level. We have seen judgments relating to sharing provisions, lease vs licence distinctions, termination of agreements and clarity on what constitutes 'redevelopment'.

Although several substantive points of principle have been decided, litigated cases are expected to continue into 2026, especially given the polarisation of parties in this particularly contentious area of law. With the Government's aim to achieve 95% standalone 5G coverage by 2030 fast approaching and large investment in the future of 6G, there is a real push by telecoms operators to increase the installation of telecoms equipment. Space is at a premium, particularly in London, so we expect to see an increase in survey requests and approaches by telecoms operators. This will inevitably increase disputes regarding costs of such visits, an area which remains very litigious.

In particular, the arguments around the basis of occupation remain a hot topic. EE Limited and Hutchinson 3G UK Limited v The Mayor and Burgesses of the London Borough of Wandsworth ("Castlemaine House") is set to be heard by the Upper Tribunal, following a grant of permission to appeal, and we anticipate seeing lease vs licence arguments and validity of notice arguments explored further.

The Tribunal expects to see site providers and operators work together to facilitate a ‘connected Britain’. We may therefore see an increase in ADR – something which previously has not been common in the telecoms sphere.

We also expect to see a cross-over between telecoms and the Building Safety Act 2022, particularly where upgrades are required. Previous ‘minor’ installations and upgrades may now cause a detrimental change to higher-risk buildings under the Building Safety Act, and with the relevant legislation being fairly new in both areas, both land owners and operators will need to give careful consideration as to how they interplay.

Finally, following a government consultation, the valuation framework that currently applies to renewals of leases under the Landlord and Tenant Act 1954 will be replaced from April 2026 with provisions that mirror the “no network” valuation model in the Electronic Communications Code. Rents will therefore be calculated on the basis of the relevant land’s value, with no reference to its use as a site for telecoms equipment. This is likely to result in a reduction of rents payable to the landowner. Disputes affected by these changes will be dealt with by the First-tier Tribunal (Property Chamber), a specialist Tribunal with considerable experience of dealing with Code cases.

LAW COMMISSION’S 14TH PROGRAMME OF LAW REFORM

The Law Commission announced its 14th programme of law reform in September 2025.

One of the ten new projects included as part of that programme was a review of the law relating to commercial leasehold, specifically:

- issues with the Landlord and Tenant (Covenants) Act 1995;
- rights of first refusal under the Landlord and Tenant Act 1987 (in so far as the law relates to commercial premises); and
- the law relating to dilapidations, service charges and the interaction between environmental frameworks and commercial leasehold law.

Although the main goal of the Landlord and Tenant (Covenants) Act 1995 is clear - securing the release of assigning tenants and their guarantors – in practice its provisions have given rise to commercially unattractive consequences that put significant limitations on how commercial parties can operate on an assignment.

A programme of reform may afford commercial tenants and their guarantors more flexibility in how assignments can be structured, for instance permitting assignment by a tenant to an existing guarantor if that is what both parties want to do – essentially aligning the legal framework with the commercial intention of the parties.

A further area being considered for reform is the right of first refusal under the Landlord and Tenant Act 1987, which is a potential pitfall for owners of mixed use assets. The 1987 Act gives qualifying residential tenants a right of first refusal when their landlord proposes to dispose of the whole or part of their premises. However, uncertainties persist over what constitutes a “relevant disposal”, and while there are some specified exceptions to the right of first refusal, the grant of a commercial lease is not one of them. Reform could clarify whether these types of disposals ought to fall within the scope pf the 1987 Act.

Further steps and their timings will be confirmed by the Law Commission in due course.

UPWARDS ONLY RENT REVIEW BAN

Two major reforms affecting business tenancies will continue to be hot topics in 2026.

Firstly, the Government’s proposal to ban upward only rent reviews across England and Wales will continue its progress through Parliament, with some commentators suggesting implementation could be as early as 2026 (although the general view is this is likely to be 2027/28). The proposals form part of a broader strategy to revitalise town centres and stimulate economic activity by offering support and flexibility to tenants, particularly in the retail sector, although concerns remain that the Bill in its current form could stifle investor confidence and lead to a revaluation of investment properties and shorter-term tenancies.

The proposed ban will affect all new and renewed commercial leases where, as at the date of the lease, the rent to be paid following a review is unascertainable. It will therefore cover traditional open-market reviews, and reviews linked to inflation or turnover. Stepped rents or fixed increases will not be impacted, as these are considered to be ascertainable at the time of the granting of the lease.

The new version of the Bill published on 30 October 2025 clarified that the ban will not generally have retrospective applicability, except in relation to existing superior leases which include a provision requiring any sub-lettings to include upwards only rent review provisions. These clauses will not be effective once the legislation is in force.

It also confirmed that occupation of premises will not be a requirement for the ban to apply, meaning that superior leases will be caught by the ban, even where the tenant does not occupy for business purposes.

The Law Commission will separately continue its scrutiny of the Landlord and Tenant Act 1954 in its bid to ensure it works for the modern commercial leasehold market. Its interim statement, published on 4 June 2025, concluded that the status quo provided for by the Act will generally remain; in other words, the existing contracting out model will stay, and there will be no change to the existing list of excluded tenancies. One change that might be on the horizon is an increase to the existing exclusion of tenancies with a term of up to 6 months. A second consultation paper expected in 2026, with precise timescales be confirmed.

REAL ESTATE RISK AREAS TO WATCH

Our report highlights 10 emerging real estate risks driven by shifting regulation, financial pressures, environmental liabilities and infrastructure challenges, offering practical signals to help stakeholders strengthen mitigation strategies and navigate an increasingly complex operating environment in 2026.

RELATED CAPABILITIES

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MEET THE TEAM

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