

## WHAT MAKES AN EFFECTIVE EXPERT WITNESS?

By Michael Soon Lee, MBA, CRS, GRI

As the real estate market slows down there are going to be more lawsuits against real estate professionals. Why you ask? When prices and profits were going up any wrongs perceived by our clients were covered-up because they were making so much money that they just didn't bother to sue. However, now that things are tighter, clients will be looking at every source of revenues to make-up for perceived "losses", including our commissions and other assets.

Let's face facts – on the surface expert witnesses are pretty much the same. They all have special knowledge or skill gain through education, training or experience as demonstrated by their vitae as well as authoring applicable books and publications. They all know how to research the subject of their testimony to make the quality of their opinions more on-point.

As you know, the plaintiff's attorney will bring in their expert to provide "objective opinions based on sound professional knowledge" and the defendant's attorney will trot out their own expert to likely state exactly the opposite opinion. So who's right?

The weight a judge or jury gives to an expert witness' testimony depends on the expert's perceived credibility and ability to deliver their opinion in a convincing manner. Assuming you have engaged an expert who has the appropriate background the big difference is how they perform at deposition and at trial.

Communicating complex issues in a language that judges and juries can understand is an art. Many experts are perfectly capable of giving a persuasive argument in front of their peers but would leave the layperson dazed and confused after only a few minutes. The author once presented a seminar on IRS Section 1031 tax-deferred exchanges to a group of real estate agents and received a standing ovation because they were finally able to understand how this complex set of rules benefited them.

While not all expert witnesses can be trained actors they should at least be able to emphasize those points of law that bolster your case. They should also be adept at deflecting challenges to your position from opposing counsel.

Finally, be sure to adequately prepare your witness prior to deposition or trial. This should include role playing questions from both the plaintiff and defendant. Also, make sure your expert does not use industry jargon or acronyms that can leave judges and juries out in the cold.

**ABOUT THE AUTHOR:** Michael Lee, MBA, CRS, GRI, has been a real estate professional for over thirty years and has acted as an Expert Witness for over two decades. He is the author of eight books and has been a television and major motion picture actor

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