Considerations for Selection of a Real Estate Expert

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INTRODUCTION

Legal cases involving real estate disputes can, and often do, turn on a real estate expert's opinion—making the expert's role particularly important in the context of such litigation. While the underlying facts of a case are generally immutable, effective selection of an appropriate real estate expert is a controllable aspect of a case that can provide significant advantage to the retaining party. This article reviews the basic role of a real estate expert and explores the primary considerations in the expert selection process.

THE ROLE OF AN EXPERT

Qualified experts usually can review a case, along with the respective fact summary, and clearly identify and understand the issues of all involved parties. The expert's interpretation of, and opinion on, the matter may align with the argument on one side of the dispute. If this alignment is not the position of the prospective retaining counsel, then the expert will (or should) likely decline the assignment. If the expert's opinion is aligned with the position of the prospective retaining party, he/she will be prepared to convincingly present and defend an interpretation (consistent with that of the retaining party) of the relevant facts of the case. Further, an expert may be able to suggest additional considerations to strengthen the retaining party's case and to recognize weaknesses in the opposition's position—in the proper manner; this is done not as an advocate for the retaining party but rather as an extension of the expert's legitimate professional opinion. If the expert's opinion is a "fit" for the prospective client, the expert may be able to assist the retaining attorney with asking the correct questions of the opposing expert in deposition, and requesting the correct documents in discovery.

WHAT MAKES SOMEONE AN 'EXPERT'?

The law requires individuals to meet fairly strict criteria before judges will qualify them as experts and allow them to testify before a jury. In the 1993 decision *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), the U.S. Supreme Court established a formula to determine whether expert testimony regarding "scientific, technical or other specialized knowledge" would help a jury. Under a Daubert analysis, which is used in all federal courts and a majority of state courts, the general rule is that an expert's opinions must be both reliable and relevant to an issue in dispute.

The following are specific criteria one must meet to qualify as an expert:

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- the witness is qualified to offer an opinion by "knowledge, skill, experience, training or education;"
- the opinion will help the jury understand the evidence;
- the opinion is based on sufficient facts;
- the opinion is the product of reliable principles and methods;
- the witness reliably applies the principles and methods to the facts of the case.

While the letter of these criteria holds at both the federal and state court levels, the application of the standards sometimes varies; however, these differences are beyond the scope of this discussion.

CONSULTANTS VERSUS EXPERTS

Distinguishing between consulting experts and testifying experts is important. A good consultant, retained early in a case, can help determine whether a testifying expert is necessary, and may even eliminate the need for one. An expert's greatest value may be in helping evaluate whether litigation in a potential lawsuit is feasible; what the chances are for success; and what the costs of prosecution or defense might be. A good consultant can help in preparing a complaint for, or spot defense to, a lawsuit.

An expert may be retained as a consultant and later converted to a testifying expert, or one expert may be hired to serve as a consultant and a second hired to testify—separating the responsibilities so that the consulting expert's work is not subject to discovery.

CHARACTERISTICS OF AN EXPERT

What a Retaining Attorney Wants

A prospective retaining attorney wants an expert who will help win his/her case. A perfect expert from the attorney's perspective is one who listens to the case summary and wholeheartedly endorses the client's position, while pointing out multiple flaws or weaknesses in the opposing position that the attorney had not considered. Occasionally this happens, but most of the time it does not. Retaining counsel expects the expert to be available when needed and to keep time and delivery commitments, sometimes even if the schedule or those commitments become unreasonable. Counsel also generally expects professionalism and strict confidentiality.

Qualifications

While it may not always be possible for an expert to meet perfectly all the desired qualities below, it is important that an expert possess most of these attributes:

Testifying experts must be qualified to testify about the subject matter at issue. Has the expert regularly performed the task at issue or have extensive personal knowledge of the practice? When it comes to impressing a jury or countering opposing counsel, reading about an issue is no substitute for knowledge obtained in the trenches.

Experts should form their own opinions. The expert should understand the opposing party's position and thoughtfully explain why it is incorrect. An expert who is too agreeable with potential retaining counsel's position may become too agreeable with an opponent who provides additional information. Retaining counsel is better off with an expert who will reach a conclusion thoughtfully and then hold to that conclusion under pressure.

When possible, retaining attorneys should select experts who previously have been successful in expert work and who is enthusiastic about doing it again. Serving as an expert can be a difficult and rigorous job—many people are not well-suited to doing what is required.

Experts should have premier credentials in the particular field. Credentials and experience are extremely important. The expert a retaining attorney selects should be successful in witness work, have impeccable credentials and have experience with similar cases. A lack of credentials or experience can be easily questioned in front of the jury. Further, true credentials and experience should be differentiated from numerous, nearly meaningless, credentials that require little more than an application fee and a basic test that most people can pass.

Has the expert been published on the subject? Published experts can explain to the jury that their opinions have withstood industry scrutiny, which helps show the authority to offer opinions in the case. Under a Daubert analysis, a judge is supposed to give preference to peer-reviewed publications.

Does the expert give presentations or teach on the subject? Experts must be both knowledgeable and persuasive—two skills that do not necessarily overlap. Both skills, however, are essential to effective expert testimony. Presentations or teaching shows that an expert can handle the advocacy part of the role. An expert with strong presentation skills will be better able to stay on message during a deposition. At trial, an expert is ideally a teaching witness through whom the lawyer can explain to a jury such concepts as liability, causation and damages.

It is productive to think beyond "expert" to salesperson, teacher and communicator. The expert's function as teacher to the attorney and jurors is a critical one. The more persuasive an expert, the better.

In a way, an expert witness is like the anchor person on a television news program. Some networks emphasize polished delivery. Others rely on seasoned reporters, valuing their command of the facts over their appearance. Ideally, the anchor person is a combination of both types, and so is the expert.

Qualifying an Expert's Interpersonal and Communication Abilities

In addition to an expert's qualifications and experience, a successful expert also needs to present well and communicate effectively to the jury. There are several ways someone can show that they satisfy these criteria, and these are the attributes that retaining counsel will (or should) look for when deciding whether someone would make a good expert in a case—aside from the expert's experience and qualifications:

Looks the part: An expert should appear professional and credible and have jury appeal. As wonderful as an expert may sound on the telephone or via email, there is no substitute for in-person presence and interaction. Certainly, experts can be encouraged to dress differently or change hairstyles, but it is much easier for the retaining counsel if it is not necessary to spend time on these matters. Experts are increasingly expected by jurors to look, walk, talk and behave like the polished actor portrayals on such popular television shows as "Law & Order" and "CSI." Few experts can pull off such poise, posture and presence under any circumstance, much less under the intense crossfire of an opponent's examination.

Is juror-sympathetic: The expert's work environment often is not conducive to effective oral presentation. Most experts primarily work with highly educated and motivated peers and students who have the basic vocabulary and education necessary to be conversant in a specialized field of study. These people are nothing like the jury. Accustomed to television sound bites, jurors expect to hear succinct descriptions not only from actors portraying experts on television, but from real experts on the stand. Experts who cannot convey their expertise in anything other than jargon-filled, convoluted sentences will not sway jurors. Unfortunately, experts' written reports do not necessarily reflect their speaking styles. Retaining attorneys will want to select witnesses who can explain their craft to the people who will serve as jurors and, before retaining, might test an expert's ability to provide short answers that are directly on point.

Has good eye contact: Experts who cannot engage good eye contact with a potential retaining attorney when speaking are not likely to engage good eye contact with jurors. Eye contact is critical to jurors' accepting the sincerity and believability of a witness.

Appears credible and objective. Being an expert involves a special kind of advocacy. Rather than promoting the client's position (that's the attorney's job), experts are supposed to advocate the opinions they have reached in the case. At a deposition, this means experts must be able to state their relevant credentials and identify the factual basis for their opinions, then defend those opinions under cross-examination.

Testifying to Value

If experts will be testifying to value, their experience, specialized knowledge and credentials will almost assuredly be scrutinized. This scrutiny is often legislatively imposed, in which case real estate agents (brokers and salespersons) may need to comply with certain criteria when rendering an opinion of value—to avoid being misleading. Compliance with these criteria may include inserting jurisdiction-specific language (the language below is required in Texas), which may look something like the following paragraph, into broker opinions of value or broker pricing opinions:

THIS IS A BROKER PRICED OPINION OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL. IN MAKING ANY DECISION THAT RELIES UPON MY WORK, YOU SHOULD KNOW THAT I HAVE NOT FOLLOWED THE GUIDELINES FOR DEVELOPMENT OF AN APPRAISAL OR ANALYSIS CONTAINED IN THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE OF THE APPRAISAL FOUNDATION.

In addition to the relevant local jurisdiction regulatory requirements, the performance of an appraisal subjects the appraiser to compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP is to appraisal what Generally Accepted Accounting Practices is to public accounting.

USPAP was adopted by the Appraisal Standards Board of the Appraisal Foundation on January 30, 1989, and is recognized throughout the United States as the generally

accepted standards of professional appraisal practice. USPAP contains standards for all types of appraisal services including real property, personal property, business and mass appraisal. The purpose of USPAP is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. Through the Financial Institutions Reform, Recovery and Enforcement Act, the federal government has mandated that the states enforce real property appraisers' compliance with USPAP.

USPAP compliance also is required by professional appraisal associations, by client groups and by dozens of federal, state and local agencies. In addition, many users of appraisal services (such as lenders, mortgage companies, etc.) have adopted USPAP and require employee or contract appraiser compliance.

USPAP sets the minimum standards for judging an appraiser's competence and credibility.

Although compliance with USPAP is generally not asserted as evidence of appraiser competency, failure to meet minimum standards can be, and frequently is, used to demonstrate negligence and/or incompetence. The importance of this fact cannot be overemphasized.

An expert should not assume that the retaining attorney knows about or understands USPAP. An expert's assistance to the litigation team can be greatly enhanced by ensuring that the attorney understands the importance of and is informed about USPAP. An expert providing the retaining attorney with questions concerning the opposing expert's compliance with USPAP can be extremely valuable.

Experts usually review the appraisal report produced by the other side in litigation for mathematical and theoretical errors, USPAP compliance, and confirmation of the accuracy of the data. Errors in any area of the report, whether or not they impact the value opinion, can damage the appraiser's credibility. Once any error is noted, the expert can expect critical questions such as:

- "What else did you miss?"
- "Where else did you miscalculate?"
- "If you were off by X percent here, could you be off by X percent in other areas as well?"

ENGAGING AN EXPERT

When Should an Expert be Retained?

There is general agreement that an expert should be involved in a case as early as possible, including in technical analysis, in preparation for deposition, in discovery, in analysis of documents in settlement and mediation discussions, and in summation of complex facts for jurors.

Therefore, a retaining attorney should start the search for an expert early. By talking to experts, retaining counsel also may learn of problems in the client's case. Getting unfavorable news early can potentially save the attorney and client a lot of time, money and aggravation. Furthermore, retaining an expert before discovery is complete may help ensure that the retaining attorney is requesting the right documents and asking the right questions during deposition. As a practical consideration, a retaining attorney also will want to "win the race" to retain the best expert for the case, and will want to make sure the expert has sufficient time to prepare.

Counsel's litigation plan should allow sufficient time:

- to identify the right expert;
- for experts to perform sufficient analysis (in the role as a confidential consultant) to know whether they will be helpful to the attorney's case; and
- for attorneys to alter their plans, if necessary, based on the consultant's preliminary conclusions.

Attorneys often start their search for an expert too late and then settle on the first individual who readily agrees with their position and is available on short notice. This poor timing on behalf of a retaining attorney can needlessly jeopardize a client's chances for success.

Locating Experts

Sources for expert witnesses include a personal referral (particularly when that source is another lawyer who has won with the expert), jury verdict reporting services, reported appellate decisions, directories, society membership rosters (though using a roster at random is generally unsatisfactory), trade associations, regulatory bodies, and private consulting firms. Additionally, it is becoming more common to utilize Internet search engines to locate experts, and many experts have Web sites, blogs and press releases posted on the Internet. Retaining counsel should be comfortable that prospective experts who have online presence are appropriately presented there. Retaining attorneys should avoid those who appear to be selling their services too hard, making guarantees or making statements about winning cases, etc.—individuals aggressively advertising their services as experts could be perceived as "hired guns," and therefore not impartial.

Reference Checks

In addition to obtaining the prospective expert's curriculum vitae, retaining counsel will usually ask potential experts for names of the attorneys involved in their most recent cases. Retaining counsel will (or at least should) contact the attorneys who used a potential expert because doing so can yield important insight, such as how the expert connects with a judge or jury and how the expert fares during testimony. The retaining attorney will also check whether the expert's opinions have ever been excluded or limited by a court, which can be done through searching published legal opinions.

It is also useful for retaining attorneys to check with individuals they know in the real estate profession who do not provide expert services to determine an expert's industry reputation. Retaining attorneys should verify that an expert they are looking to retain will follow through with the case until the end, and will be available when needed—retaining attorneys do not want an expert who might drop out before even getting to trial or at the last minute.

As part of the vetting process, experts should be prepared to provide their Rule 26 Testimony and Publication Log. If they do not know what this is or do not have one, it could indicate little experience in testifying (which occasionally is desirable).

Conflicts

Surprisingly, while attorneys are governed by strict ethical rules, conflicts-of-interest rules for experts are virtually nonexistent. Experts rely on their credibility and reputations, providing enormous incentive for self-regulation. In almost every case, before accepting an assignment, an expert and the expert's firm should perform a comprehensive conflict check. This topic is reviewed here in depth because of the importance of appropriately handling client interactions and avoiding conflicts of interest.

A conflict of interest does not automatically disqualify an expert from giving testimony. The key is whether the expert's opinion is independent of the parties in a specific case and the pressures of the litigation.

Situations that may preclude an expert from accepting an engagement, absent informed consent from the prospective client or retaining counsel, are as follows:

- An expert's acceptance of the engagement could materially harm a current client's interests;
- Acceptance of the assignment would create a conflict of interest, (i.e., the expert's provision of services would be materially limited by the expert's duties to other clients);
- The expert's relationship to third parties, if such relationships might not allow for a fully independent opinion from the expert;
- The expert's own interests may conflict with the case.

If the expert has already been retained by the client in pending, separate ongoing litigation, the expert could be testifying for a client in one case but against the same client in concurrent litigation. This potential situation raises difficult issues of confidentiality. If an expert proceeds with potentially conflicting engagements, it must be with the understanding with all attorneys involved that there will be no *ex parte* communication regarding any other assignments.

These conflicting assignments may make it difficult for counsel in one case to effectively cross-examine an expert because impeaching his/her credibility in one case could be harmful to counsel's own case. Legitimate efforts to attack an expert in one case would be ready ammunition for opposing counsel to use against the expert in another case. This effectively eliminates the potential right to challenge the expert's opinion and credibility in one case for fear of harming another case.

Experts should be mindful of the risks inherent to acting in cases involving former clients, as this can prompt allegations of knowledge or information gained while working for a former client being used to the former client's disadvantage. Whenever there is a conflict of interest of this kind, or it appears that there may be one, the expert should obtain the informed consent of both the old and new clients before agreeing to act for the new client. This will involve, at a minimum, disclosing to each client the other's name and nature of the assignment completed or contemplated. It will be necessary for the expert to clear with each client what they propose to tell each other. In securing the former client's consent, it may help if the expert has returned all of the documents relating to the case or cases in which evidence was given on behalf of the former client. If the former client does not consent ,the expert should decline the new assignment.

When accepting engagements, experts assume responsibility to clients to exercise care with regard to the

investigations they carry out and to provide soundly based evidence and opinions. This requires experts to undertake only those tasks they are competent to perform and to give only those opinions they are competent to provide.

Expert testimony should be and should seem to be independent, objective and unbiased. The evidence should be the same regardless of who is paying for it. Personal, professional and/or financial links with parties to a dispute or with businesses in competition with the parties should normally preclude an expert from acting as an expert witness in any litigation in which the parties are engaged.

The primary duty of an expert witness is to the court—to be truthful as to fact, thorough in technical reasoning, honest as to opinion, and complete in coverage of relevant matters. This applies to written reports as much as to oral testimony regardless of whether the expert is under oath. Experts should consider making a statement at the end of their report along the lines of the following:

- the expert has no conflict of interest of any kind other than that disclosed in the report;
- the expert does not consider any disclosed interest affects suitability as an expert on any issue on which he/she has given evidence;
- the expert will advise the party by whom he/she is engaged if, between the date of the report and the trial, there are any changes in circumstances that affect the answers to the bullet points above.

Appropriate Communication

As either a retaining attorney or as an expert, it is important to use great care in communicating from the outset. It must be assumed that every conversation among counsel, client, attorney and anyone else concerning the expert's work on the case, along with all material in the expert's file and documents generated by the expert, will be discovered. It is usually better for a retaining attorney to look for another expert than to try to block discovery that might be embarrassing.

Written reports should be discouraged at the very first meeting. The retaining attorney should give the client clear guidelines as to what can and cannot be discussed with the expert: remember, all conversations with testifying experts are likely discoverable.

No Withholding Information

A retaining attorney should give the prospective expert all relevant information (good and bad), but especially the information that is unfavorable to the client's position. The withholding of unfavorable information from retaining counsel's expert will only lead to problems. When the unfavorable information comes out (and it will), the expert will have to choose between changing his/her opinion, or defending the unreasonable. If the expert is not credible because the retaining attorney withheld information, his/her testimony will not be useful. It can be helpful for retaining counsel to provide a case summary, either in writing or verbally from a well-prepared set of notes.

Over-Designation of Experts

Retaining counsel should be careful not to over-designate experts and should try to avoid having duplicate experts who cover similar topic or technical areas—this will reduce or eliminate the risk of inconsistencies in testimony. It may be in the retaining attorney's interest to focus on thoroughly preparing a single expert, as many experts are vulnerable because of lack of thorough preparation (often on the part of the retaining attorney).

Experts should not be over-extended—that is, they should not undertake assignments (or be asked to undertake assignments) if their credentials may be questionable or if they have concerns about their suitability or the case.

Who is the Expert's Client?

It is important that experts are aware who is serving as their client. There are advantages to the attorney or law firm engaging the expert, and some experts are leery of engaging directly with the attorney's client, preferring instead to be engaged by the law firm.

This can be important when engaging an appraisal expert, as an appraisal expert will need to specifically know who is actually the client.

Engagement Agreements

Most sophisticated experts require a written engagement. These documents should cover terms including the scope of work and services to be provided, fees, retainers, billing, travel expenses and other pertinent aspects of the engagement understanding.

What an Expert Should Consider Before Taking an Assignment

Even if experts meet the appropriate basic criteria from the perspective of a potential retaining attorney, it is important that they consider the following questions before accepting an assignment:

- What is their preliminary opinion, and how do they really feel about the case?

- According to the expert's knowledge and experience, is it apparent how the relevant law/statute/precedent applies to the facts of the dispute? If so, can he/she help with the case?
- Does the expert have any conflicts?
- Does retaining counsel expect the expert to advocate for his/her professional opinion or for the retaining counsel's case? The expert must understand that an attorney is a paid advocate and usually wants everyone on the attorney's team working toward the demands and satisfaction of the client.
- What is the prospective client's and retaining counsel's reputation in the community?
- Are those reputations with which the expert would want to associate?
- How does the expert "mesh" with the attorney?

Testimony

Many experts view giving testimony as one of the most difficult aspects of an expert engagement. In giving testimony, experts must effectively convey their professional opinions on the issues or topics they have investigated and analyzed. This process requires them to communicate to a jury in a manner not overly technical and not condescending—it is a teaching function in which experts relate the unknown to the known, in order to assist the jury with understanding the facts and the expert opinion. Testifying should be done in a succinct and efficient manner, and it often requires the use of analogy and/or metaphor.

For many experts, testifying is the least desirable part of an assignment because the expert's position is usually argued directly against that of an opposing expert. Holding oneself out to the world as an expert has been compared to a boxer leading with the chin and proclaiming, "Take your best shot." The opposing counsel's goal is to discredit the expert's testimony and possibly the actual expert. Consequently, it is common for billing rates to be higher for testifying.

SCOPE OF WORK AND COMPENSATION

Defined Scope of Work

A scope of work is the description of the expected services and functions that are to be performed for a given engagement. The retaining attorney should provide the expert with a well-defined written or verbal description (from a well-prepared set of notes) of the expected scope of services for the engagement so the expert can determine if the assignment is clearly within his/her realm of experience and expertise. This is also necessary if the retaining attorney is requesting a budget estimate for the engagement. The more detailed and descriptive the requested scope of services, the more credible and reliable the engagement fee estimate will be. A clear scope of work also serves as a checklist for the expert who is preparing a report or otherwise preparing for the case. If an expert has performed or prepared for all items in the defined scope of work (checklist), the expert should be finished and ready.

Expert Fees and Billing

Most expert fees are paid by the hour, with the expert's hourly rate usually determined by a combination of the following factors: the expert's experience, qualifications and credentials, reputation, availability of other experts and the amount at stake in litigation. Most experienced experts require, at a minimum, an initial retainer, and more sophisticated experts will generally ask for a replenishable retainer paid in advance to eliminate collections problems. At least a portion of the retainer is usually nonrefundable in case the expert is being retained to "conflict him/her out" of the case and in instances where the case settles after the expert is designated.

Travel and other pre-agreed expenses are applied against the retainer. Fee agreements with experts that are contingent (in whole or in part) upon the outcome of the case are unethical and potentially illegal in many jurisdictions.

It Pays to Prepare

No one knows everything—including experts. Retaining attorneys should be willing to pay for research and preparation time sufficient to allow the expert to be properly prepared for every stage of the case. This includes experts' refreshing themselves on case documents they might not have seen for months, depending on the case schedule, and includes real estate appraisers who may have prepared an appraisal report for the case six months ago and will be deposed the following week. These considerations should all be identified and accommodated when the budget is drafted.

Budgeting

- **Budget.** Before execution of a retention agreement, retaining counsel and the expert should commit to a budget. This will require the retaining attorney to define the scope of expected work and estimate and cap time required. It is unfair to expect a firm price without a well-defined scope of work and caps for time required, and a clearly defined scope of work can result in fewer misunderstandings and potentially lower total costs for the retaining party.

- **Verbal budgets.** There are benefits to utilizing verbal budgets instead of detailed written budgets. Detailed written budgets are likely discoverable and may be a source of aggressive or misleading cross-examination, (i.e., claims that the expert devoted minimal effort in certain areas as reflected in low budgeted fees).
- **Breakdown of litigation budget into separate phases**. Litigation budgets can be broken down into phases: 1) Initial review phase: time and cost to review file materials must be estimated. If the expert must travel to a location to provide an opinion, travel costs, time and inspection time can easily be calculated; 2) Discovery phase: during this phase, the expert must prepare a report or assist in preparing responses to expert interrogatories. The expert also may be required to give a deposition; 3) Costs associated with testing and demonstration: such costs that the expert intends to present at trial must be included in the budget; and 4) Trial preparation and trial phase: this phase may involve preparation for trial testimony, attendance at trial and testimony at trial.
- **Cost estimates.** If the scope of work has been clearly defined and has not been increased, the expert can expect to be held to the initial cost estimates.
- **Possible budget supplementation from unforeseen developments**. Retaining counsel should explain to the client that sometimes unexpected occurrences may require additional work from the expert, in which case there may be a need for expert budget supplementation.
- **Amended or supplemental budgets in the retention agreement.** Retaining counsel should ensure that both the client and the expert understand the circumstances under which amended or supplemental budgets may be submitted, including all factors to be considered in approving them.

CONCLUSION

Real estate experts have one of the most important and challenging roles in cases involving real estate disputes. While attorneys present evidence, expert witnesses serve *as* evidence, and are therefore subjected to closer and more personal scrutiny. Experts not only must have the skills to produce accurate and meaningful analysis and opinions, but they also must be consummately prepared to defend their positions under typically hostile circumstances. For this reason, experts must possess a balance of traits and characteristics that is often uncommon even among well-respected, seasoned real estate professionals. While these skills and characteristics can be cultivated throughout the course of a career, a long tenure in the industry is just a necessary, not sufficient, condition—and many veteran participants in the real estate industry still have a way to go before they are prepared to serve as experts.

The overview of the role and responsibilities of real estate experts contained herein does not cover all of the nuances of the practice but strives to serve as a broad introduction to the selection and use of expert witnesses. It is intended to convey that serving as a successful expert witness is, in some senses, an honor—in that it reflects a strong reputation in the local, regional or national real estate community; it reflects an acknowledgement of the capacities of an expert in the field as well as in the art of communication; and it reflects a confidence in the integrity and credibility of the individual serving as an expert. ■