



IREM® From the Front Lines Podcast

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Serving as an Expert Witness

Erin:

Welcome to another edition of From the Front Lines, where we discuss both the day-to-day, and one-of-a-kind issues facing real estate managers. In this episode, David Meit, CPM® and ARM®, Principal of Oculus Realty, talks to us about serving as an expert witness in property management. Welcome to the podcast, David.

David:

Erin, it's great to be here today. Thank you very much for the invitation.

Erin:

Of course! It's great to have you. Now let's jump in to our questions. What led you to pursue a career as an expert witness in property management and how did your experiences prepare you for this role?

David:

Great question, and like so many things in my career, by accident. I'm a big believer that when opportunity knocks, you want to open the door, but you have to be prepared to open the door. I was managing property for a client who had actually purchased a note for a building that was not being managed well and he ended in litigation. He asked me to come in and testify on his behalf on how well the property was being managed. And that was the first time that I ever realized that being an expert witness in the standard care and property management was even a thing. And that was about 12 years ago and the rest is history. I will say a shout out to Anne Rice. She was also CPM, who I also serve on the ethics, discipline and hearing board. She's been an expert witness for about 25 years or more, and she was extremely helpful in instructing me and mentoring me and what it meant to be an expert witness, particularly as an IREM designee.

Erin:

All right. Can you describe what an expert witness does in property management cases and how it differs from traditional property management roles?

David:

Absolutely. Being an expert witness has absolutely nothing to do with being a property manager on a day-to-day basis. What it requires is an understanding of the standard of care in property management. So that takes decades of experience, skills, accreditation, training to become an expert witness. But what does that mean? The example that I always use is, if you've ever seen an episode of Law and Order and they get to the trial, and they bring the pathologist up, and the lawyers are starting to ask the fellow just about the time of death. That is an expert witness. It is

somebody that's brought into the courtroom to explain to basically the jury and the judge what it is in a technical manner. And try to explain what it is in layman's terms. That's what an expert witness is. So what do I do as an expert in the standard of care and property management? Any type of litigation that involves in the day-to-day management of real estate, I get asked to provide an opinion. It could be a contract dispute between a third party property management company and a client. It could be a partnership dispute between two partners, where one believes the property's not being operated as well as it should. It could be as simple as premises liability cases where I work for a plaintiff's attorney. Maybe it's a slip and fall or a dog bite or anything having to do with the management of property, I get asked what my opinion is a matter to the standard of care. And basically it's a little bit beyond best practices. It's what is expected within the industry in general. So that's what I do. You can't know that unless obviously you've been in property management for a long time.

Erin:

Right. What specific skills, certifications or qualifications are necessary to succeed as an expert witness in the property management field?

David:

Well, I don't think there's any accreditation or designations that are required, but I will say that the vast majority of the expert witnesses in this field all have CPMs, and that goes to the fact that the CPM is the gold standard in property management. Some of us may have ARMs. Some of us may have ACoMS, depending on where we are within the industry with commercial managers or residential managers or industrial. But the vast majority of the requirements are the decades of experience and training that has gone into it. You can't provide an opinion unless you have an opinion to provide that is well-thought out and frankly is respected by the practitioners, the lawyers, the laymen, the jury, the judge for you to be able to explain that. And so that's really what the difference is. I think you need to have great communication skills. I'd like to think some of the best property managers are very good at administration and communication, but an expert witness also needs to write a report in most cases and so writing skills becomes really paramount and be able to communicate in the written word and so experience, the skills, being able to communicate effectively, those are all what goes into becoming an expert witness in the field of property management standard of care.

Erin:

Excellent. What are some of the biggest challenges you've encountered as an expert witness, and what do you find most rewarding about this work?

David:

Yeah, great question. The biggest challenge is time. My career over the last 12 years since I've been an expert witness, I have slowly moved out of day-to-day property management, more into advisory work and expert witness work, because being a day-to-day manager does take a lot of time. It's a full-time job, so time is probably the most challenging. When I write a report, I read through literally thousands of documents. That all takes time. And then I write what is no less than what would be considered a term paper fully with footnotes and bibliography materials used. I speak to a lot of people, I get deposed. There's a lot of activity that goes into it, so time is probably the biggest issue. The most rewarding is learning from other people's mistakes. You know, I've been in business for over 35 years and I have made a lot of mistakes and that has informed me and frankly made me a better manager. But there are many, many cases that I have that are just situationally different than anything that I've managed. And something will come up and I'll, you

know, tell my team, you know, are we doing this? You know, are we not doing this? You know, and so it actually helps me to become a better property manager, and that's probably the number one take-away that I really cherish. It also helps me with my advisory work since I do much less day-to-day property management as I do advisory work at this point. And frankly the last part that I find really rewarding is I try to do about half defense work and about half plaintiff's work, and in the plaintiff's work that I do, you know, unfortunately there's a lot of bad actors out there and there's a lot of managers or people who put their manager hat on that really have no place being a property manager and they cause mayhem and I've dealt with, you know, carbon monoxide poisoning or trip and fall hazards, or people falling off of buildings because of design issues and things like that. And so I do find it very rewarding that I can identify what those things are. I can help the plaintiff and their family, but more importantly, I can inform our industry and if you've ever looked at any of my social media posts, particularly on LinkedIn, I'll say, you know, are you doing this? You know you don't want me to be an expert for the opposing counsel. And so if that makes us more professional as an industry and informs IREM and other companies in trade associations like BOMA and NAA to do it better, then I think that I'm also adding a lot of value, and that's extremely rewarding to me.

Erin:

What advice would you give to property management professionals who are interested in exploring this career path?

David:

Learn, learn, learn, be a lifelong learner. A lot of people enter property management as a job, not as a career. You're not going to be a successful property manager unless you've chosen to make this a career, and that means you become educated academically, either through university in those areas that provide that type of training, or more importantly, the trade associations. Obviously IREM being the number one in the world in the type of training to become a property manager. And listen, I've been a member of IREM for 30 years and I still take classes. I'm still very involved in the industry. I've mostly been involved on the ethics and the education side, and I served as chair of lots of different committees and I've learned a lot about how our organization IREM works, but more importantly, how our industry works, and that becomes really important because you're being asked to opine on what it is that we do as professional property managers. And then it's just experience. Anybody who thinks to become an expert witness five years into their career is up for a big surprise. When I first started taking my expert witness training, I realized about 85% of the people that were in my training programs were doctors and the reality is, is that just like property managers, you can't be, you know, in as a cardiac surgeon for five years and really become an expert. The people who become experts have decades of experience, and that's exactly where you need be is as an expert witness. It wasn't until I was in my 40s when I really fell into it, and now that I'm in my 50s, I'm in my prime because I have 35 years of experience. But that has been very, particularly over the last 12 years since I understood that this was a career path, I've been very methodical on how I've gone about understanding what it is about our industry that I can learn. And sharpen my skill set to be able to provide value to my attorneys who hire me to provide my opinions.

Erin:

Great. How do you maintain impartiality and credibility as an expert witness and what best practices would you recommend for others in this role?

David:

Great question, Erin. Some time ago I was informed of an adage that I keep in my mind when I'm testifying or when I'm writing my report. And that is regardless of whom I'm working for, either the plaintiff's attorney or the defendant's attorney, I'm only representing one side and that's the industry. What I am there is to explain property management or real estate management. And that's the most important thing to understand. I don't have a horse in the race of whatever this litigation is, and I will admit that that was somewhat difficult when I first started doing this because I'm in real estate. I've been in litigation. It's nature of the business, right? And I'm a landlord, and so I kind of fall into always being on the side of a housing provider. And that was my worldview until I really began to understand, no, what my job is to explain what it is that we do. What is the standard of care in my business? What is the best practices in property management and that's really the way I can stay impartial. And let me tell you, I have had retaining attorneys hire me and I'll do an initial review of the documents and I'll say, "You may not want me to write a report because I'm going to be very honest about the things that were done correctly and the things that were not done correctly." And that's the most important thing too is to stay impartial and anybody who's in any type of expert witness role has the same type of impartiality. So building on what I just said, it really is about understanding your business, and when you're taking a look at all the documents, literally thousands of pages of depositions and discovery documents, is that you keep in the back of your mind what you're looking for is, what is the standard of care? What was done in response to a certain situation and what would I have done? And again, it's my opinion based on 35 years of experience and training on what I believe would have been the best way to go about doing it or what the standard of care is. In other words, what the expectation is for somebody else that would have been in that position. For example, it would have been, you know, if a background check on a tenant went awry and so one party sued the other because money was owed. Well, what was done? How were the revenue protected and was it done correctly? And my knowledge and my experience in the research that goes into it explains that. But that's all that I'm providing is actual facts based on what it is that I've learned and how we do things in our business. So be impartial and always keep that in mind.

Erin:

Great. Thanks for joining us, David.

David:

Absolutely, Erin. It's been a real pleasure and as always, anybody who is a CPM and is interested, I am available, just reach out to me.

Erin:

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