



FITZPATRICK
REAL ESTATE SCHOOL
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**3 Hours of Agency Law
Continuing Education**

Approved by the Arizona Department of Real Estate

Participant Outline

JOSEPH R. FITZPATRICK

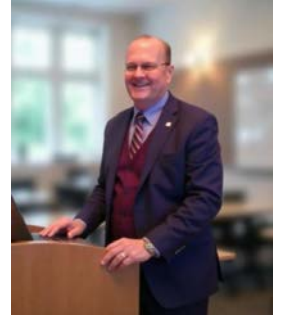
MEET JOE:

Joe Fitzpatrick graduated from The University of Nevada, Las Vegas in 1985 and began his career with Coldwell Banker in Margate, Florida, listing and selling real estate. Joe went on to manage the North Miami office and opened Century 21 Fitzpatrick Realty with family. The firm became the top-ranked Century 21 company in Broward County, Florida.

In 1991, Joe returned to Las Vegas where he began teaching and authoring real estate courses. He also continued on as Vice-President of Century 21 MoneyWorld, which was consistently ranked among the top 10 Century 21 firms in the world where he led the education division among other duties.

Joe has authored and published over 30 real estate licensing textbooks and courses available on Amazon.com and which have been approved for utilization in several states. He made a few stops along the way including being the Education Director at LVR. You may recognize his voice from other online sites. Living through sellers' markets and buyer's markets, Joe has experienced interest rate fluctuations of 17.5% and 2%. He knows what it takes to stay successful in the business no matter what the market conditions may be.

Joe opened Fitzpatrick Real Estate School in both Nevada and Arizona, and continues to practice real estate in addition to his other responsibilities. We trust you will find Mr. Fitzpatrick's courses to be informative, interesting, and entertaining too.



HOW IT WORKS

The student participant must:

- view all hour(s) of the video presentation (links are located on the website under the Internet course title).
- direct attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction and distracting.
- complete the “Online Video Worksheet” included in the course outline as you view the presentation, filling in the “Checkpoints” as they are displayed throughout the videos.
- take the quiz found in the outline.
- complete the course evaluation upon the conclusion of the course.
- submit the (1) Attestation, (2) Quiz answers, (3) Online View Worksheet, and the (4) Course Evaluation using the links provided directly above the videos.
- obtain score of 80% or more on the quiz and a score of 80% must be obtained on the Online Video Worksheet. A student, who tries to skip through the course and not devote the required hours, will not pass. The answers for the worksheet are sprinkled throughout the presentation.
- With a passing score on the quiz and worksheet, along with the submitted evaluation, a certificate will be emailed to you promptly.

ONLINE VIDEO WORKSHEET

The Arizona Department of Real Estate holds CE course sponsors, such as Fitzpatrick Real Estate School, accountable for the following regarding online/distance learning courses:

- verify that students watch the complete presentation and spend the appropriate number of hours required to earn a certificate;
- verify that students did not start the presentation and leave the presentation to run on its own without the student viewing it;
- evaluate the student mastery of the material;
- provide the student with support services and interaction;
- have a method to assess student performance during instruction.

To accomplish these goals, we have developed this "Online Video Worksheet" to accompany the videos we use to teach CE courses online. Throughout the videos, have embedded "checkpoints" that will prompt you to fill in the answers below.

In order to receive credit for the online course, you must answer the checkpoints correctly with a score of 80% and submit using the Online Video Worksheet link located above the three videos.

CHECKPOINT #1: _____

CHECKPOINT #2: _____

CHECKPOINT #3: _____

CHECKPOINT #4: _____

CHECKPOINT #5: _____

CHECKPOINT #6: _____

CHECKPOINT #7: _____

CHECKPOINT #8: _____

CHECKPOINT #9: _____

CHECKPOINT #10: _____

Student Name: _____ Date: _____

Course Title: Who's the Boss?

I. Course Overview:

Who's your boss in a real estate transaction? Is it the Buyer? Seller? Both? Neither? The Broker? It depends doesn't it? The subject of agency seems to be easy enough, but we continue to see more and more violations, complaints, and litigation regarding agency responsibilities. Just take a look at the many disciplinary actions imposed by the Commissioners on licensees who either don't understand their duties – or don't care.

In an agency relationship, there is a great deal of trust given by the buyer or seller to the agent who has been entrusted to act in the client's behalf. Many of our laws exist with the intent of protecting the public in some cases from their very own agent. We think you will clearly see why agency has been a primary focal point in education requirements as we share some of the more prominent agency violations.

II. Why is agency getting so much attention? Have the laws of agency changed?

- A. real estate brokers used to be one-person operations
 - 1. one broker hired by seller to find a buyer
 - 2. no confusion: the broker represented the seller
- B. multiple listing service created
 - 1. brokers share information about their listings with other brokers
 - 2. listing brokers and selling brokers share commissions
 - 3. buyers came to rely on “their broker”
 - 4. selling brokers were actually subagents of the seller; seller paid the commission
 - 5. 57% of the buyers thought “their” agent represented them
 - 6. 74% of the sellers thought the agent who worked with the buyers represented the buyers
- C. evolution of buyer agency
 - 1. prevalent in the 1990s
 - 2. equal representation for the buyers
 - 3. selling agents no longer subagent; became buyer brokers

III. We don't believe the laws of agency changing are the cause for agency violations!

- A. almost 30 years ago
 - 1. most licensees today weren't licensed in 90s and many not even born!
 - 2. didn't experience the shift
- B. We believe the cause of violations is failure to properly apply laws of agency to everyday events.
 - 1. failure to understand consequences of spoken words and actions
 - 2. failure to understand how who we represent governs our behavior

EXAMPLE 1: Tom is a licensed salesperson with Champions Realty and has Sam Seller's house listed for sale. Tom calls past client Betty to tell her about the listing which she is eager to see. After viewing the property with Tom, Betty asks Tom to write an offer 10% below list price but informs him she will go higher if necessary.

Who does Tom represent? Is he a single agent or a dual agent?

Does Tom have an obligation to disclose to the sellers that Betty will go higher in price? Would that compromise his duties to Betty if he has any duties to Betty?

IV. Limited Dual Agency

- A. Dual Agency
 - 1. agent represents both parties in the same transaction
 - 2. “limited dual agency”
 - 3. two scenarios where this could arise:
 - a. the listing agent finds the buyer for her own listing
 - b. a buyer’s agent sells the buyer a property listed by another agent within the firm
 - 4. informed, written consent of *all* parties
 - a. *Consent to Limited Representation*
 - b. *neither* party is obligated to go along with such representation
 - 5. legally possible, but virtually impossible – adverse interests
 - 6. fairness or neutrality is not enough; advocacy is compromised
 - 7. Dual Agency Video: <https://www.youtube.com/watch?v=tBn2Rbup9WY> (15 mins)
“Limited Dual Agency: A Balancing Act,” Idaho Real Estate Commission
 - 8. 8 States Where Dual Agency is Illegal: as of 2021:
 - a) Alaska (the state allows designated agency when disclosed)
 - b) Colorado
 - c) Florida
 - d) Kansas
 - e) Maryland (the state allows designated agency when disclosed)
 - f) Texas (the state allows agents to act as an intermediary)
 - g) Vermont (the state permits designated agency when disclosed)
 - h) Wyoming (the state allows designated agency when disclosed)

EXAMPLE 2: Referring to Example 1, what if agent Bernice, also of Champions Realty were the agent who showed Buyer Betty the property and wrote an offer 10% below list. Offer the coffee pot, Bernice tells Tom that her buyer would go higher if necessary.

Should Tom inform Sam Seller that the buyer will pay more?

Should Bernice have shared Betty’s willingness to pay more with Tom?

How do the agency relationships govern the agents’ behavior? Are you beginning to see where the spoken words and actions of the licensees can impact the clients?

Any known defect with the subject property that could affect the property’s value or desirability in a negative manner is known as a

_____.

How do material facts pertain to agency in Arizona?

- In Arizona, real estate licensees are legally obligated to disclose material facts that could influence a transaction. This duty is outlined in both the Arizona Revised Statutes and the Arizona Administrative Code.
- A.A.C. R4-28-1101 – Duties to Client

This rule outlines the fiduciary duties of a licensee:

- Disclosure of Material Information: A licensee must disclose in writing to all parties any information that materially or adversely affects the consideration to be paid by any party to the transaction. This includes:
 - Information that the seller or lessor is or may be unable to perform.
 - Information that the buyer or lessee is or may be unable to perform.
 - Material defects existing in the property being transferred.
 - Existence of a lien or encumbrance on the property being transferred.

Failure to disclose such information can lead to disciplinary action against the licensee.

- Failure to Disclose (Common Areas of Risk)
 - increasing litigation regarding a licensee’s obligation to disclose material and relevant facts
 - Remember, “A licensee who acts as an agent in a real estate transaction shall disclose to each party to the real estate transaction as soon as is practicable any material and relevant facts, data or information which the licensee knows, or which by the exercise of reasonable care and diligence should have known, relating to the property which is the subject of the transaction.”
 - Note the wording “or which by the exercise of reasonable care and diligence should have known.”
 - not expected to investigate the property like a home inspector or builder
 - required to notice visible signs of potential and existing problems
 - Duty of further Inquiry
- Failure to disclose (silence) is an act for which licensees may be disciplined by the Commission.
- Exactly what is a “material fact?”
 - defect or circumstance that negatively affects the value or desirability of the property
 - Patent v. Latent Defect
 - material facts must be disclosed
 - seller is required to disclose all known defects in the property by means of a property disclosure statement
 - substantial financial consequences the seller could face by not disclosing any known problems or defects prior to the close of escrow

EXAMPLE #3: TEST YOUR KNOWLEDGE

Check the items that would be considered material facts:

- ☐ basement floods
- ☐ heating system does not work
- ☐ murder took place in the home
- ☐ toxic mold
- ☐ neighbor’s fence extends over subject property line
- ☐ clothes dryer is gas
- ☐ sex offender lives in the neighborhood
- ☐ broken window pane

V. Arizona Forms Pertaining to Agency

1. Real Estate Agency Disclosure and Election
2. Consent to Limited Representation

REAL ESTATE AGENCY DISCLOSURE AND ELECTION

Document updated:
August
2024

This document is not an employment agreement



ARIZONA
ASSOCIATION OF
REALTORS®
REAL SOLUTIONS. REALTOR® SUCCESS.

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1. Firm Name ("Broker") _____
2. acting through _____

LICENSEE'S NAMELICENSEE'S NAME
3. hereby makes the following disclosure.

DISCLOSURE

4. Before a **Seller or Landlord (hereinafter referred to as "Seller")** or a **Buyer or Tenant (hereinafter referred to as**
5. **"Buyer")** enters into a discussion with a real estate broker or licensee affiliated with a broker, the Seller and the Buyer
6. should understand what type of agency relationship or representation they will have with the broker in the transaction.
7. **I. Buyer's Broker:** A broker other than the Seller's broker can agree with the Buyer to act as the broker for the Buyer. In
8. these situations, the Buyer's broker is not representing the Seller, even if the Buyer's broker is receiving compensation
9. for services rendered, either in full or in part, from the Seller or through the Seller's broker:
10. a) A Buyer's broker has the fiduciary duties of loyalty, obedience, disclosure, confidentiality, and accounting in dealings
11. with the Buyer.
12. b) Other potential Buyers represented by broker may consider, make offers on, or acquire an interest in the same or
13. similar properties as Buyer is seeking.
14. **II. Seller's Broker:** A broker under a listing agreement with the Seller acts as the broker for the Seller only:
15. a) A Seller's broker has the fiduciary duties of loyalty, obedience, disclosure, confidentiality, and accounting in dealings
16. with the Seller.
17. b) Other potential Sellers represented by broker may list properties that are similar to the property that Seller is
18. selling.
19. **III. Broker Representing both Seller and Buyer (Limited Representation Broker):** A broker, either acting directly or
20. through one or more licensees within the same brokerage firm, can legally represent both the Seller and the Buyer in a
21. transaction, but only with the knowledge and informed consent of both the Seller and the Buyer. In these situations, the
22. Broker, acting through its licensee(s), represents both the Buyer and the Seller, with limitations of the duties owed to the
23. Buyer and the Seller:
24. a) The broker will not, without written authorization, disclose to the other party that the Seller will accept a price or terms
25. other than stated in the listing or that the Buyer will accept a price or terms other than offered.
26. b) There will be conflicts in the duties of loyalty, obedience, disclosure and confidentiality. Disclosure of confidential
27. information may be made only with written authorization.
28. Regardless of who the Broker represents in the transaction, the Broker shall exercise reasonable skill and care in the
29. performance of the Broker's duties and shall be truthful and honest to both the Buyer and Seller and shall disclose all known
30. facts which materially and adversely affect the consideration to be paid by any party. Pursuant to A.R.S. §32-2156, Sellers,
31. Lessors and Brokers are not obligated to disclose that a property is or has been: (1) the site of a natural death, suicide,
32. homicide, or any crime classified as a felony; (2) owned or occupied by a person exposed to HIV, or diagnosed as having
33. AIDS or any other disease not known to be transmitted through common occupancy of real estate; or (3) located in the vicinity
34. of a sex offender. Sellers or Sellers' representatives may not treat the existence, terms, or conditions of offers as confidential
35. unless there is a confidentiality agreement between the parties.
36. **THE DUTIES OF THE BROKER IN A REAL ESTATE TRANSACTION DO NOT RELIEVE THE SELLER OR THE BUYER**
37. **FROM THE RESPONSIBILITY TO PROTECT THEIR OWN INTERESTS. THE SELLER AND THE BUYER SHOULD**
38. **CAREFULLY READ ALL AGREEMENTS TO ENSURE THAT THE DOCUMENTS ADEQUATELY EXPRESS THEIR**
39. **UNDERSTANDING OF THE TRANSACTION.**

>>

Real Estate Agency Disclosure and Election >>

ELECTION

40. **AGENCY ELECTION DOES NOT ESTABLISH BROKER COMPENSATION.**

41. Compensation paid by a Buyer or Seller to their Broker is always fully negotiable and the amount chosen shall be
 42. documented in a separate written employment agreement after discussion with their Broker. Should a Seller also
 43. choose to offer compensation to a Buyer’s Broker, the offered amount is fully negotiable and agreed upon after
 44. discussion with Seller’s Broker.

45. (BUYER OR SELLER INITIALS REQUIRED) _____ / _____

46. **Buyer or Tenant Election** (Complete this section only if you are the Buyer.) The undersigned elects to have the Broker
 47. (check any that apply):
 48. ☐ represent the Buyer as Buyer’s Broker.
 49. ☐ represent the Seller as Seller’s Broker.
 50. ☐ show Buyer properties listed with Broker’s firm and Buyer agrees that Broker shall act as agent for both Buyer and
 51. Seller provided that the Seller consents to limited representation. In the event of a purchase, Buyer’s and Seller’s
 52. informed consent should be acknowledged in a separate writing other than the purchase contract.

53. **Seller or Landlord Election** (Complete this section only if you are the Seller.) The undersigned elects to have the Broker
 54. (check any that apply):
 55. ☐ represent the Buyer as Buyer’s Broker.
 56. ☐ represent the Seller as Seller’s Broker.
 57. ☐ show Seller’s property to Buyers represented by Broker’s firm and Seller agrees that Broker shall act as agent for both
 58. Seller and Buyer provided that Buyer consents to the limited representation. In the event of a purchase, Buyer’s and
 59. Seller’s informed consent should be acknowledged in a separate writing other than the purchase contract.

60. The undersigned ☐ Buyer(s) or ☐ Seller(s) acknowledge that this document is a disclosure of duties.

61. **I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE.**

^ PRINT NAME _____	^ PRINT NAME _____
^ SIGNATURE _____ MO/DA/YR _____	^ SIGNATURE _____ MO/DA/YR _____

CONSENT TO LIMITED REPRESENTATION (“CONSENT”)
BROKER REPRESENTS BOTH SELLER AND BUYER OR BOTH LANDLORD AND TENANT

Document updated:
 December 2002



The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.



1. Buyer/Tenant (“Buyer”): _____
2. Seller/Landlord (“Seller”): _____
3. Subject Property: _____
4. Firm Name (“Broker”): _____

5. **Consent:** Buyer and Seller consent that Broker, acting through the Licensee(s) named below, will represent both parties in the transaction.

6. ☐ One Licensee: SAMPLE
 (NAME)
7. ☐ Two Licensees: SAMPLE, who, through the Broker, has been representing the Buyer;
 (NAME)
8. and SAMPLE, who, through the Broker, has been representing the Seller.
 (NAME)

9. **Duties and Limitations:** The Broker now represents both Buyer and Seller and both parties understand that neither Broker nor Broker’s Licensee(s) can represent the interests of one party to the exclusion or detriment of the other party. The parties understand and further consent to the following:

12. a) The Licensee or each Licensee represents both the Buyer and the Seller with limitations of the duties owed to the Buyer and the Seller, such as:
 14. 1) The Licensee(s) will not, without written authorization, disclose to the other party that the Seller will accept a price or terms other than stated in the listing or that the Buyer will accept a price or terms other than offered;
 15. 2) There will be conflicts in the duties of loyalty, obedience, disclosure and confidentiality. Disclosure of confidential information may be made only with written authorization. This does not relieve each Licensee of any legal obligation to disclose all known facts which materially and adversely affect the consideration to be paid by any party to the transaction.
 16. 3) Pursuant to A.R.S. §32-2156, Sellers, Lessors and Broker/Licensee(s) are not obligated to disclose that the Subject Property is or has been: (1) the site of a natural death, suicide, homicide, or any crime classified as a felony; (2) owned or occupied by a person exposed to HIV, or diagnosed as having AIDS or any other disease not known to be transmitted through common occupancy of real estate; or (3) located in the vicinity of a sex offender.
23. b) The Licensee(s) shall exercise reasonable skill and care in the performance of their duties.
24. c) The Licensee(s) shall be obligated at all times to deal honestly with all parties.
25. d) The duties of the Licensee(s) in this transaction do not relieve the Seller or the Buyer from the responsibility to protect their own interests.

26. **Compensation:** Compensation to the Broker shall be paid pursuant to separate agreement(s).

27. **Prior Agreements:** Seller and Buyer understand this Consent does not replace prior agreements entered into with Broker and such agreements shall remain in effect. However, to the extent that the terms of this Consent contradict or conflict with the terms of prior agreements, this Consent shall supersede.

30. **Termination:** If the Seller and Buyer do not enter into a contract relating to the Subject Property or if the transaction between the Seller and the Buyer fails to close, the parties agree that this Consent is terminated, and the parties shall have no further rights or obligations pursuant to this Consent.

33. **Indemnification:** Seller and Buyer agree to indemnify and hold Broker harmless against any and all claims, damages, losses, expenses or liabilities including attorneys’ fees and costs incurred by Broker in any defense thereof arising from Broker’s role of limited representation.

36. THE UNDERSIGNED PARTIES ACKNOWLEDGE THAT THEY HAVE THOROUGHLY READ, UNDERSTOOD AND APPROVED THIS CONSENT AND ACKNOWLEDGE RECEIPT OF A COPY.

38. SAMPLE MO/DA/YR SAMPLE MO/DA/YR
 A BUYER’S SIGNATURE A BUYER’S SIGNATURE
39. SAMPLE MO/DA/YR SAMPLE MO/DA/YR
 A SELLER’S SIGNATURE A SELLER’S SIGNATURE

Consent to Limited Representation (“Consent”) • Updated: December 2002
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VI. Common Violations of Agency Leading to Disciplinary Actions

- A. As you read through the statutes above, it is easy to see the acts that commonly lead to disciplinary actions:
- did not disclose to all parties as soon as practicable
 - did not disclose material facts known or that should have been known
 - did not disclose each source of the licensee's compensation
 - did not disclose license status when acting as a principal in the transaction
 - did not obtain informed consent when a dual agency: Consent to Limited Representation
 - did not exercise reasonable skill and care
 - did not maintain obligations of confidentiality
 - did not present all offers as soon as practicable
 - did not advise the client to obtain advice from an expert when matters are beyond the licensee's expertise
 - did not account for all money and property
 - did not present all offers as soon as practicable
 - did not advise the client to obtain advice from an expert when matters are beyond the licensee's expertise
 - did not account for all money and property
-
- 32-2153: The commissioner may suspend or revoke a license, deny the issuance of a license, issue a letter of concern to a licensee, issue a provisional license or deny the renewal or the right of renewal of a license issued under this chapter if it appears that the holder or applicant has [committed any of the violations listed in this section].
 - 32-2160.01: Any licensee who is subject to the jurisdiction of the department and who has violated any provision of this chapter or any rule or order adopted or issued by the commissioner, may be assessed a civil penalty by the commissioner, after a hearing, in an amount not to exceed one thousand dollars for each infraction.

VII. Applying Concepts to Real-World Situations

A. Example 4:

Ralph and Lilly are excited and ready to purchase their first home. After going to open houses, looking at ads online, and driving by yard signs, the couple contacts Mary to help them find a dream home.

They all meet at Mary's office to discuss the buyers' needs and wants. They contact Mary's preferred lender for an informal pre-qualification. They discuss few of the company's listings and a few available in the MLS™. Mary is successful in obtaining a signed buyer brokerage agreement and they begin visiting the properties for consideration.

Ralph and Lilly narrow their search down to one home and proceed to write an offer with Mary. The offer is presented to the sellers and is accepted without change.

As it pertains to laws of Agency:

1. What happens if the listing agent, Alex, is another agent in Mary's firm?
2. What happens if the listing agent is Mary?
3. What occurs if the listing agent is with another brokerage firm?
4. How should agency relationships be disclosed if the property is a For Sale by Owner?
5. What would happen if the buyers told Mary that they would go \$10,000 higher if it meant getting the house?

QUIZ

1. Real estate laws and regulations exist in Arizona for the purpose of:
 - a. unduly restricting activities of real estate agents.
 - b. keeping current with the times.
 - c. protecting the public.
 - d. All of the above
2. Prior to the 1990s:
 - a. real estate brokers always represented the seller.
 - b. sellers compensated the brokers involved in the transaction.
 - c. the agent working with the buyer was considered a sub-agent.
 - d. All of the above
3. Which of the following statements regarding an agent representing both parties to the transaction is FALSE?
 - a. A Real Estate Agency Disclosure and Election form is required.
 - b. A Consent to Limited Representation form is required.
 - c. Informed, written consent is required.
 - d. It is legal in all 50 states.
4. How do material facts affect agency in Arizona?
 - a. Real estate licensees are legally obligated to disclose material facts that could influence a transaction.
 - b. Information that the buyer may be unable to perform must be disclosed.
 - c. Existence of a lien or encumbrance on the property being transferred must be disclosed.
 - d. All of the above
5. Which of the following items would be considered a material fact?
 - a. the basement floods **Checkpoint #10**
 - b. a new heating system was just installed
 - c. a murder took place in the home
 - d. the dishwasher has a significant dent in the front door
6. The duty of confidentiality in Arizona lasts:
 - a. until the close of escrow.
 - b. for up to one year after the termination of the agency.
 - c. until the client signs an agency agreement with another broker.
 - d. forever.

7. Which of the following types of statements may a seller's agent make:
 - a. the seller's motivation for selling.
 - b. how low of an offer the seller will accept.
 - c. that the home has toxic mold.
 - d. that the reason the sellers are selling is a divorce.
8. The Commission may impose a financial penalty of what amount per violation of the licensing law?
 - a. \$1,000
 - b. \$5,000
 - c. \$25,000
 - d. Any amount the Commissioner deems appropriate.
9. An in-house sale will be treated as a:
 - a. single agency.
 - b. dual agency.
 - c. assigned agency.
 - d. transaction brokerage.
10. ____ hours of agency continuing education is required for every license renewal.
 - a. 3
 - b. 6
 - c. 9
 - d. None of the above