



“DID YOU DISCLOSE?”



3 Hours of Disclosure Continuing Education by Internet Delivery

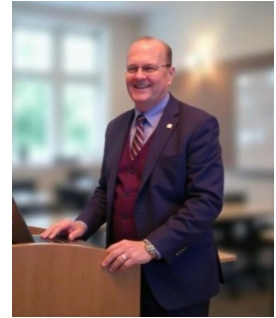
Approved by the Arizona Department of Real Estate

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: Did You Disclose?

I. Introduction

- A. Icebreaker: *“What’s the strangest disclosure issue you’ve had in a deal?”*
- B. Furnace in the Desert
- C. Course objectives: Did you disclose everything in the transaction you are supposed to disclose? Is it possible you could be disciplined for failure to disclose? Then, there are those items we are not even required to disclose. This could be confusing. We will provide you a refresher to set it all straight!

II. Licensee’s Disclosure Obligations

1. Statutes & Rules: A.R.S. §32-2153

32-2153. Grounds for denial, suspension or revocation of licenses; letters of concern; provisional license; retention of jurisdiction by commissioner; definitions

A. 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, within five years immediately preceding, in performing or attempting to perform any acts authorized by the license or by this chapter, has:

- 1. Pursued a course of misrepresentation or made false promises, either directly or through others, whether acting in the role of a licensee or a principal in a transaction.
- 2. Acted for more than one party in a transaction without the knowledge or written consent of all parties to the transaction.
- 3. Disregarded or violated any of the provisions of this chapter or any rules adopted by the commissioner.
- 4. Knowingly authorized, directed, connived at or aided in the publication, advertisement, distribution or circulation of any material false or misleading statement or representation concerning the licensee's business or any land, cemetery property, subdivision or membership campground or camping contract offered for sale in this or any other state.
- 5. Knowingly used the term "real estate broker", "cemetery broker" or "membership camping broker" without the legal right to do so.
- 6. Employed any unlicensed salesperson or unlicensed associate broker.
- 7. Accepted compensation as a licensee for performing any of the acts specified in this chapter from any person who is not authorized to provide compensation pursuant to section 32-2155.
- 8. Represented or attempted to represent a broker other than the broker to whom the salesperson or associate broker is licensed.
- 9. Failed, within a reasonable time, to account for or to remit any monies, to surrender to the rightful owner any documents or other valuable property that comes into the licensee's possession and that belongs to others, or to issue an appraisal report on real property or cemetery property in which the licensee has an interest, unless the nature and extent of the interest are fully disclosed in the report.
- 10. Paid or received any rebate, profit, compensation or commission in violation of this chapter.
- 11. Induced any party to a contract to break the contract for the purpose of substituting a new contract with the same or a different principal, if the substitution is motivated by the personal gain of the licensee.

12. Placed a sign on any property offering it for sale or for rent without the written authority of the owner or the owner's authorized agent.
13. Solicited, either directly or indirectly, prospects for the sale, lease or use of real property, cemetery property or membership camping contracts through a promotion of a speculative nature involving a game of chance or risk or through conducting lotteries or contests that are not specifically authorized under this chapter.
14. Failed to pay to the commissioner the renewal fee as specified in this chapter promptly and before the time specified.
15. Failed to keep an escrow or trust account or other record of monies deposited with the licensee relating to a real estate transaction.
16. Commingled the monies or other property of the licensee's principal or client with the licensee's own or converted these monies or property to the licensee or another.
17. Failed or refused on demand to produce any document, contract, book, record, information, compilation or report that is in the licensee's possession or that the licensee is required by law to maintain concerning any real estate, cemetery or membership camping business, services, activities or transactions involving or conducted by the licensee for inspection by the commissioner or the commissioner's representative.
18. Failed to maintain a complete record of each transaction that comes within this chapter.
19. Violated the federal fair housing law, the Arizona civil rights law or any local ordinance of a similar nature.
20. Tendered to a buyer a wood infestation report in connection with the transfer of residential real property or an interest in residential real property knowing that wood infestation exists or that the wood infestation report was inaccurate or false as of the date of the tender or that an inspection was not done in conjunction with the preparation of the wood infestation report.
21. As a licensed broker, failed to exercise reasonable supervision over the activities of salespersons, associate brokers or others under the broker's employ or failed to exercise reasonable supervision and control over the activities for which a license is required of a corporation, limited liability company or partnership on behalf of which the broker acts as designated broker under section 32-2125.
22. Demonstrated negligence in performing any act for which a license is required.
23. Sold or leased a property to a buyer or lessee that was not the property represented to the buyer or lessee.
24. Violated any condition or term of a commissioner's order.
25. Signed the name of another person on any document or form without the express written consent of the person.
26. As a licensed school, failed to exercise reasonable supervision over the activities for which a license is required for an owner, director, administrator or instructor in the school's employ.

B. 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:

1. Procured or attempted to procure a license under this chapter for the holder or applicant or another by fraud, misrepresentation or deceit or by filing an original or renewal application that is false or misleading.
2. Been convicted in a court of competent jurisdiction in this or any other state of a felony or of any crime of forgery, theft, extortion, conspiracy to defraud, a crime of moral turpitude or any other like offense.
3. Made any substantial misrepresentation.
4. Made any false promises of a character likely to influence, persuade or induce.
5. Been guilty of any conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealings.

6. Engaged in the business of a real estate broker, cemetery broker or membership camping broker or real estate salesperson, cemetery salesperson or membership camping salesperson without holding a license as prescribed in this chapter.
7. Demonstrated incompetence to perform any duty or requirement of a licensee under or arising from this chapter. For the purposes of this paragraph, "incompetence" means a lack of basic knowledge or skill appropriate to the type of license the person holds or a failure to appreciate the probable consequences of the licensee's action or inaction.
8. Violated the terms of any criminal or administrative order, decree or sentence.
9. Violated any federal or state law, regulation or rule that relates to real estate or securities or that involves forgery, theft, extortion, fraud, substantial misrepresentation, dishonest dealings or violence against another person or failure to deal fairly with any party to a transaction that materially and adversely affected the transaction. This paragraph applies equally to violations of which the licensee was convicted in any lawful federal or state tribunal and to any admissions made in any settlement agreement by the licensee to violations.
10. Failed to respond in the course of an investigation or audit by providing documents or written statements.

C. A judgment based on a court's finding or stipulation of fraud by a licensee following a trial on the merits or a criminal conviction of a licensee that results in a payment from the real estate recovery fund is prima facie evidence of a violation and grounds for discipline under this section.

D. The commissioner may deny, suspend or revoke the issuance of a license on application by a corporation, a limited liability company or a partnership if it appears that an owner, officer, director, member, manager, partner, stockholder owning ten percent or more of the stock in the corporation or limited liability company or person exercising control of the entity is a current or former licensee whose license as a broker or a salesperson has been denied, suspended or revoked.

2. R4-28-1101 – duty to disclose *all known material facts*.

A. A licensee owes a fiduciary duty to the client and shall protect and promote the client's interests. The licensee shall also deal fairly with all other parties to a transaction.

B. A licensee participating in a real estate transaction shall disclose in writing to all other parties any information the licensee possesses that materially or adversely affects the consideration to be paid by any party to the transaction, including:

1. Any information that the seller or lessor is or may be unable to perform;
2. Any information that the buyer or lessee is, or may be, unable to perform;
3. Any material defect existing in the property being transferred; and
4. The existence of a lien or encumbrance on the property being transferred.

C. A licensee shall expeditiously perform all acts required by the holding of a license. A licensee shall not delay performance, either intentionally or through neglect.

D. A licensee shall not allow a controversy with another licensee to jeopardize, delay, or interfere with the initiation, processing, or finalizing of a transaction on behalf of a client. This prohibition does not obligate a licensee to agree to alter the terms of any employment or compensation agreement or to relinquish the right to maintain an action to resolve a controversy.

E. A real estate salesperson or broker shall not act directly or indirectly in a transaction without informing the other parties in the transaction, in writing and before the parties enter any binding agreement, of a present or prospective interest or conflict in the transaction, including that the:

1. Salesperson or broker has a license and is acting as a principal;
2. Purchaser or seller is a member of the salesperson's, broker's, or designated broker's immediate family;
3. Purchaser or seller is the salesperson's or broker's employing broker, or owns or is employed by the salesperson's or broker's employing broker; or
4. Salesperson or broker, or a member of the salesperson's or broker's immediate family, has a financial interest in the transaction other than the salesperson's or broker's receipt of compensation for the real estate services.

F. A salesperson or broker shall not accept compensation from or represent more than one party to a transaction without the prior written consent of all parties.

G. A salesperson or broker shall not accept any compensation, including rebate or other consideration, directly or indirectly, for any goods or services provided to a person if the goods or services are related to or result from a real estate transaction, without that person's prior written acknowledgement of the compensation. This prohibition does not apply to compensation paid to a broker by a broker who represents a party in the transaction.

H. The services that a salesperson or broker provides to a client or a customer shall conform to the standards of practice and competence recognized in the professional community for the specific real estate discipline in which the salesperson or broker engages. A salesperson or broker shall not undertake to provide professional services concerning a type of property or service that is outside the salesperson's or broker's field of competence without engaging the assistance of a person who is competent to provide those services, unless the salesperson's or broker's lack of expertise is first disclosed to the client in writing and the client subsequently employs the salesperson or broker.

I. A salesperson or broker shall exercise reasonable care in ensuring that the salesperson or broker obtains information material to a client's interests and relevant to the contemplated transaction and accurately communicates the information to the client. A salesperson or broker is not required to have expertise in subject areas other than those required to obtain the salesperson's or broker's license. A salesperson or broker shall take reasonable steps to assist a client in confirming the accuracy of information relevant to the transaction.

J. A salesperson or broker shall not:

1. Permit or facilitate occupancy in a person's real property by a third party without prior written authorization from the person; or
2. Deliver possession prior to closing unless expressly instructed to do so by the owner of the property or property interest being transferred.

K. A salesperson or broker shall recommend to a client that the client seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post-possession of a property.

3. Duties to clients: full disclosure of anything that might affect decision-making.

Duties to clients: full disclosure of anything that might affect decision-making

In Arizona, real estate licensees have a fiduciary duty to clients and must disclose in writing any information that materially or adversely affects the consideration to be paid by any party to the transaction. This includes any information that the seller or lessor is or may be unable to perform, any information that the buyer or lessee is, or may be, unable to perform, any material defect existing in the property being transferred, and the existence of a lien or encumbrance on the property being transferred. Licensees must also expeditiously perform all acts required by the holding of a license and not allow a controversy with another licensee to jeopardize, delay, or interfere with the initiation, processing, or finalizing of a transaction on behalf of a client.

4. Duties to third parties: honesty, material fact disclosure, no misrepresentation.

Duties of Disclosure to Third Parties

In Arizona, real estate agents have a duty to disclose material information to third parties, including potential buyers and sellers, even if the client has a duty to disclose. This duty extends to any information that materially or adversely affects the transaction. Real estate agents must disclose known defects in the property or transaction, such as structural issues, environmental hazards, and past repairs. They must also disclose any insurance claims made on the property in the past five years. If an agent violates this duty, they may face legal action from the other party in the transaction.

5. Discussion Prompt: “How do you decide what’s a ‘material fact’ when it’s not obvious?”

III. Key Disclosure Topics

A. SPDS (Seller’s Property Disclosure Statement)

- Purpose: Put all known conditions in writing.
- Covers property systems, appliances, repairs, environmental conditions, neighborhood.
- Not required by law, but failing to use it increases liability.
- Always encourage full and honest completion.
- VIDEO: https://www.youtube.com/watch?v=E_S2GzR7HM4&t=41s (8 min of 45)

B. Lead-Based Paint (1978 rule)

- Required by federal law for homes built before 1978.
- Buyer must receive EPA pamphlet, disclosure form, and 10-day inspection right.
- Noncompliance = federal fines, rescission of contract.
- <https://www.youtube.com/watch?v=aFclpO6ia5o> (5 min of 45)

C. Environmental Hazards

- Radon, asbestos, mold, meth contamination, groundwater contamination.
- A.R.S. §49-701 requires disclosure of certain hazardous waste sites.
- Practical tip: Always recommend professional testing rather than offering personal opinion.

Property Conditions

Although you will not be expected to identify environmental hazards in the home, or to be an expert in construction or home inspection, we offer this brief introduction to some of the more common issues that can have an effect on a resident’s health and may even lead to death.

- **Asbestos.** Asbestos is used in the manufacture of construction materials. It is used because the fibers are resistant to heat, and asbestos is often used as an insulator. It is also used to make construction products more durable. For years, asbestos was used in the making of ceiling and floor tiles as well as electrical and building insulation. Asbestos fibers can be ingested in the human body and can lead to serious health issues including fatal lung disease.
- **Carbon Monoxide.** This odorless, colorless gas results as a byproduct of burning certain fuels including gasoline. Operating an automobile, lawnmower, gas generator, etc. in a poorly ventilated area can trap carbon monoxide and harm humans. For \$20.00 or less, a homeowner can purchase a carbon monoxide detector.

- **Electromagnetic Fields (EMFs).** EMFs are generated by the movement of electrical currents and are emitted from above ground power lines. There is much skepticism about whether these fields are actually harmful. Power companies argue there is no link from the EMFs to health issues, but science suggests resulting symptoms include headaches, anxiety, suicide, depression, nausea, fatigue, and loss of libido.
- **Lead and Lead-based Paint.** Lead pipes and joints can be found in older homes. With time, the lead deteriorates and gets into the water supply. Lead-based paint can be found in homes built prior to 1978. It was common for young children to pick at the dry chips of paint and eat them, causing brain damage and death. There is actually a federal disclosure form required in every residential real estate transaction if the home was built prior to 1978. This disclosure lists all of the potential harm that could come about as a result of ingestion.
- **Leaking Underground Storage Tanks.** These tanks are commonly found at gas stations and where other petroleum products are stored underground. They can also be found in older homes for the storage of oil used for heat. After many years, the tanks rust and deteriorate leaking the petroleum into the ground and ground water.
- **Mold.** Mold is an environmental hazard that has gained significant attention by consumers. Some molds are harmless while others can cause health matters when inhaled, disturbed, or touched. Toxic black mold called “stachybotrys” is of particular concern. The general types of symptoms caused by toxic black mold include respiratory problems, skin inflammation, hemorrhage, irritation of the mucous membranes, damage to internal organs, mental impairment, tiredness, nausea, and immune system suppression.
- **Radon.** Radon is a colorless, odorless, and radioactive gas. It is released from the movement of materials below the ground and can enter the home through the foundation and other crevices. Radon can lead to lung cancer.
- **Urea Formaldehyde Insulation.** This insulator starts out in a gaseous state and can be blown in between the walls. Inhalation can lead to serious health matters.
- VIDEO <https://www.youtube.com/watch?v=iTuj3kvw2Q8> 4:18

D. Material Facts

- Definition: A defect in the subject property that negatively causes a loss of value or total desirability of the property.
- Examples: foundation issues, past flooding, unpermitted additions, zoning changes, road projects.
- **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 (SRPD)
 - substantial financial consequences the seller could face by not disclosing any known problems or defects prior to the close of escrow

E. No Stigma Rule (Stigmatized Properties)

- A.R.S. §32-2156 – no duty to disclose:
 - Death, suicide, homicide, HIV/AIDS status, or felony nearby.
- BUT: Cannot lie if directly asked—best practice: direct them to official sources (police, health dept).

32-2156. Real estate sales and leases; disclosure

A. No criminal, civil or administrative action may be brought against a transferor or lessor of real property or a licensee for failing to disclose that the property being transferred or leased is or has been:

1. The site of a natural death, suicide or homicide or any other crime classified as a felony.
2. Owned or occupied by a person exposed to the human immunodeficiency virus or diagnosed as having the acquired immune deficiency syndrome or any other disease that is not known to be transmitted through common occupancy of real estate.
3. Located in the vicinity of a sex offender.

B. Failing to disclose any fact or suspicion as set forth in subsection A shall not be grounds for termination or rescission of any transaction in which real property has been or will be transferred or leased.

IV. Need For Inspection and Obtaining/Verifying Information

Imagine an agent saying, in response to an attorney’s question regarding disclosing a property defect, “Well, that subject never came up.” That might be an unfortunate answer because agents have a “duty of further inquiry.”

The duty of further inquiry – When representing a seller or a buyer, an agent is required to “discover and disclose” any material fact or material defect of which the agent knows or *should have known*. When do you find out if you should have known? This point deals with the role of being a professional in a fiduciary relationship. The professional is expected to be able to “spot” potential problems or issues and then pursue the answer until it is found.

EXAMPLE: While showing a two-story home, the agent notices a pale, but visible, tan spot on the ceiling of a room on the first floor. Knowing that small tan spots on the ceiling are not generally normal, the agent has just been subjected to the *duty of further inquiry*.

If the agent is representing the sellers, he should ask the sellers about the spot as this suggests a possible plumbing leak and the potential for the presence of mold. If the sellers tell the agent that they had not noticed it previously, the agent needs to tell the sellers that the source should be determined.

If the sellers agree to research and resolve the incident, all is well. If the sellers decide they will paint the spot to match the ceiling, but do not want to incur any additional expense, there is a big problem. The agent has to deal with the other obligation of being a professional and must disclose to the customers (the customers are the persons not represented by the agent in a client/agent relationship) all material facts concerning the property, including any material defects. The agent may want to discuss this with his broker to see if the representation of the seller should be continued. Who knows what other problems the seller is planning to “paint over.”

Agent responsibility to inquire about “red flag” issues – From time to time, an agent will see, or should see, one or more issues that are obvious only if the agent is trained into look for them. These might be called “red flag” issues because of their importance, and agents should construct a mental checklist to ask about these when listing a property or showing a property to a buyer.

A major home inspection company reports that 40% of previously owned homes have one or more of these serious defects. Virtually every home needs some sort of repair, improvement, modification, etc., either to function properly or to be in compliance with building codes.

Here are some of the “red flag” issues that agents should be aware of, and ready to point out and follow up on with buyers and sellers:

- moisture or water in the basement
- cracks in foundation or basement walls; evidence of settling
- failing air-conditioning compressor; sounds noisy or won’t start
- environmental hazards including radon, water contamination, asbestos, or lead paint
- underground storage tanks; pipes sticking out of the ground
- defective roofing or flashings; several colors of roofing materials on one roof
- signs of water damage on ceilings or walls
- insect infestation
- standing water outside the structure; evidence of drainage issues
- undersized electrical system
- chimney settling or separation from house; leaning, missing bricks
- evidence of dry-rot damage
- unpermitted structures of any kind

Most of the above conditions can be repaired. It is simply a matter of cost and of whether the buyer or seller does the fixing. Or, it might result in a situation where the seller refuses to fix the issue, and the buyer thinks it too expensive and decides to move on to another property.

A new roof repair of dry-rot damage, and a few foundation issues, could cost \$25,000 on a home worth \$200,000, which would scare many buyers off unless the listing price had been discounted by the price of these repairs.

The best protection for your client, even if you represent the seller, is to have a structural inspection or home inspection done by a qualified home inspector, which will cost \$200 to \$500, depending on the inspector and the size of the home. It is good practice to provide your client with a list of qualified inspectors and let them select one to use. If you give them only one choice, and that engagement fails to go well, it could reflect poorly on you.

If repairs are needed, there are three ways to proceed:

- the buyer can ask the seller to fix one, two, or all of the issues.
- the buyer can buy the home “as is,” if the price is right.
- the buyer can ask for a price reduction.

The key for the agent is to make a mental checklist of “red flag” issues and look for them when listing or showing a property.

Technical details – Agents must always be alert to the quality of information they are working with and must be sure that representations made to either clients or customers are correct.

EXAMPLE: An agent is taking a listing and asks the seller if there have been any additions to the home, and if so, were proper permits and inspections obtained. The seller says no, they have not enlarged the home or done anything to it since they bought it. The agent takes measurements of the property and finds that it is approximately 2,800 square feet and this is the number the client has furnished.

While verifying the property tax amount, the agent notices that the tax assessor has the property listed in the tax records at 2,370 square feet. The agent is now subject to the duty of further inquiry. The seller does not have any idea why there is a difference and is happy to just let the matter alone, as it might increase the taxes. What must be done?

Again, the agent should discuss the situation with the broker because there is a potential liability if nothing is done. At the very least, the agent should inform a buyer that there appears to be a discrepancy between the actual square footage and the square footage carried on the tax rolls. This *could* represent the following problems:

- The tax information is wrong and, when corrected, the taxes will probably go higher than either party may be expecting.
- An addition has been made by a previous owner who may not have obtained permits, or who may have used incompetent licensed contractors.

The agent’s best solution is to make the disclosure, in writing, to both the seller and the buyer. A future problem, if there is one, should not be the responsibility of agent because the agent has made a full and complete disclosure.

Remember that while the rule of *caveat emptor* (let the buyer beware) is still applicable in some situations, all of the parties in a transaction expect the professionals to look out for them.

Remember that the agent’s role as a fiduciary does not turn the agent into an insurance company. The agent has discharged her duty when she has provided the parties with a disclosure of *patent defects* (visible) and has honored her duty of further inquiry when she has done all that is reasonable to discover the answer regarding *latent defects* (hidden or non-visible).

Material Facts Relating to Property Condition Or Location

As described earlier, an agent must disclose any *material and relevant facts, data or information* which the agent knows, or which by the exercise of reasonable care and diligence, the agent should have known, relating to the property that is the subject of a transaction

We can articulate a list of seven types of material facts and some associated red flags:

1. Land/soil conditions – An individual agent may be knowledgeable of various land and soil conditions, and therefore be obligated to disclose these facts. Some examples are as follows:
 - Homes in this section of the county have trouble with septic tank leach fields.
 - The well water here is unpalatable.
 - This location is right under the flight path of the air force base.
 - This site used to be a chemical plant that made dioxin.
2. Pest infestation, toxic mold, and other interior environmental hazards:
 - There are mousetraps all around the home.
 - Roof rats are known to infest homes in this area.
 - This is the worst area in the county for mosquitoes.
3. Accuracy of lot or improvement size, encroachments, or easements affecting use:
 - Electrical wires cross over the swimming pool.
 - The size of the yard is listed at 8,000 square feet in a subdivision where all of the other lots are 6,000 square feet.
4. Condition of electrical and plumbing systems, and of equipment or appliances that are fixtures:
 - Some copper wire has been stolen from the circuit breaker panel.
 - The inside workings of the A/C units have been stolen.
 - The glass panel in the oven door is cracked (and probably leaking).
5. Structural issues, including roof, gutters, downspouts, doors, windows, foundation:
 - The chimney, which rises from a ground-level pad, has separated from the house and is leaning toward the driveway. The windows are all single pane (before 1960).
 - The door between the house and garage has a pet door; this is a fire code violation.
6. Known alterations or additions:
 - This garage has been converted to a bedroom, but the additional area is not reflected on the tax records.
 - One bedroom seems to be added. It has no heating or cooling vents.
7. Location within natural hazard or specially regulated area (potentially uninsurable property):
 - There have been some sinkholes appear down the street.
 - This neighborhood floods each January.

V. HOA Disclosures & Buyer Obligations

- **A.R.S. §33-1806 & §33-1260:** Sellers must provide HOA docs.
- Includes: CC&Rs, bylaws, rules, annual financials, budgets, insurance, litigation.
- Buyers must review and approve within allotted time.
- Issues: rental restrictions, pet rules, parking, assessments.
- **Activity:** Show a sample HOA disclosure packet. Ask: “What would you flag to your client?”
- **VIDEO:** <https://www.youtube.com/watch?v=b5rHCCh1EXc>

VI. Agency Disclosures & Conflicts

Real Estate Agency Disclosure and Election (READE Form)

- Required by ADRE to disclose:
 - Seller representation, buyer representation, or limited dual representation.
- Must be presented at first substantive contact.

Agent Acting as Principal

- When licensee is buying/selling for themselves, they must disclose license status **in writing** (R4-28-1101(E)).
- Cannot use professional expertise to mislead the other party.

Dual Agency

- Legal in Arizona **with written informed consent from both parties.**
- Must remain neutral – cannot favor one side.
- High liability risk if mishandled.

VIDEO: <https://www.youtube.com/watch?v=UixLgzFfbJk&t=5s>

VII. THREE, 10-MINUTE CASE STUDIES

Case Study 1: The Hidden Water Damage

Susan and Michael Reynolds listed their 3-bedroom home in Chandler with Angela, a REALTOR® who has represented them before. During her listing walkthrough, Angela noticed faint brown stains on the family room ceiling and some discoloration in the garage drywall.

When asked, Susan explained: “Oh, that’s from back in 2017 when our roof leaked during a monsoon storm. We hired a handyman who patched the roof, and we haven’t had any issues since. No need to make a big deal about it.”

Angela asked if they had any paperwork to show the repairs. Michael admitted, “No, he was a friend who just came by and fixed it.” Susan insisted the stains were “just cosmetic” and didn’t want it mentioned on the Seller’s Property Disclosure Statement (SPDS), fearing it would “scare buyers away.”

When buyers, Mark and Kelly, toured the home, their agent specifically asked Angela if the home had any history of roof or water issues. Angela, trying to avoid conflict with her sellers, shrugged and said: “Not to my knowledge — the roof seems fine.”

Mark and Kelly bought the home and moved in during the summer. By the next monsoon season, the patched area leaked again, causing thousands of dollars in drywall and flooring damage.

Guided Questions:

1. Did Susan and Michael (the sellers) have a duty to disclose?
2. Did Angela (the listing agent) violate her disclosure duties?
3. How could the buyers’ agent have better protected their clients?
4. What recourse might the buyers have now?

Case Study 2: The Haunted House on Juniper Street

Realtor Mark represented a small craftsman bungalow in Prescott, recently renovated by an out-of-state seller. The property had charm: hardwood floors, a wraparound porch, and a history that stretched back to 1920.

When prospective buyers, Jim and Laura, toured the property, a neighbor approached them casually and whispered: “You know, people say this house is haunted. And there was a suicide here two years ago — right in that upstairs bedroom. Scared off the last buyer.”

Shaken, Jim asked Mark why this hadn’t been mentioned. Mark, surprised, replied: “Honestly, I didn’t know. And even if I did, Arizona law doesn’t require me to disclose stigmas like death or ghosts. What matters is the property’s condition, not its reputation.”

Laura felt unsettled and wondered if the agent was trying to hide something. The buyers hesitated — not because of the physical house, but because of the psychological stigma surrounding it.

Guided Questions:

1. Did the seller or agent have a legal duty to disclose the suicide or rumors of haunting?
2. How should Mark have handled the buyers’ concerns?
3. What’s the difference between a material fact and a stigmatized fact?
4. Should agents *ever* disclose stigmas, even if not required by law?

Case Study 3: The HOA Surprise in Scottsdale

Carlos and Maria put an offer on a stylish townhouse in Scottsdale listed by agent Rebecca. The listing highlighted the community’s amenities: pool, tennis courts, and well-manicured landscaping. What the listing *didn’t* mention was that the homeowners’ association was in the middle of a heated legal battle with the original builder over faulty stucco and water intrusion. Homeowners had already been assessed \$3,000 each to help fund the legal costs, with talk of further assessments looming.

Rebecca knew about the litigation but figured, “That’s the HOA’s problem — not mine.” The sellers also minimized the issue, saying, “It’s not settled yet, so why scare buyers?”

At closing, Carlos and Maria received the standard HOA resale disclosure package, but it was vague and didn’t clearly explain the pending lawsuit. Six months later, the HOA announced a special assessment of \$8,500 per unit to cover escalating attorney fees.

Carlos and Maria were furious, feeling blindsided. They contacted their attorney, claiming Rebecca and the sellers should have disclosed the pending litigation.

Guided Questions:

1. Was pending HOA litigation a required disclosure?
2. Who was responsible for disclosing — the seller, the HOA, or the listing agent?
3. Did Rebecca meet her obligations as a REALTOR®?
4. What protections could have helped the buyers avoid this surprise?

DID YOU DISCLOSE? QUIZ

1. Under A.R.S. §32-2153, which of the following is a ground for license suspension or revocation?

- A. failing to advertise in a newspaper
- B. representing more than one party in a transaction without written consent
- C. forgetting to renew your driver's license
- D. accepting referrals from another licensee

2. According to R4-28-1101, licensees must disclose in writing:

- A. any personal opinions about neighborhood desirability.
- B. all advertising costs.
- C. material defects that affect consideration in the transaction.
- D. all past property owners.

3. The Seller's Property Disclosure Statement (SPDS) is:

- A. legally required by Arizona statute in every transaction.
- B. optional, but strongly recommended to reduce liability.
- C. only required if the home is over 20 years old.
- D. completed by the buyer's agent.

4. Lead-based paint disclosure is required for:

- A. all residential properties
- B. only homes with known lead contamination
- C. homes built before 1978
- D. commercial properties only

5. Which of the following is considered a *material fact* requiring disclosure?

- A. Seller believes the home is “bad luck.”
- B. A zoning change planned for the neighborhood.
- C. A previous occupant had HIV.
- D. Neighbors complain about barking dogs.

6. Under A.R.S. §32-2156 (stigmatized properties), which fact is a licensee *not* required to disclose?

- A. a murder occurred in the home
- B. the roof leaks during heavy rain
- C. the property is located in a flood zone
- D. an unpermitted addition was built

7. What is the duty of further inquiry?

- A. Investigating all past owners of the property.
- B. Asking questions when “red flag” issues are noticed.
- C. Reviewing every HOA meeting minute.
- D. Performing a home inspection personally.

8. Which of the following documents are sellers required to provide under A.R.S. §33-1806 and §33-1260 regarding HOAs?

- A. HOA governing documents, financials, rules, and litigation information.
- B. A list of all past HOA presidents.
- C. Neighborhood gossip about the HOA board.
- D. Personal contact information of HOA members.

9. When must the Real Estate Agency Disclosure and Election (READE) form be presented?

- A. at closing
- B. at first substantive contact
- C. only if dual agency is intended
- D. within 10 days of contract signing

10. If a licensee is acting as a principal in their own transaction, they must:

- A. keep their license status private.
- B. disclose their license status in writing.
- C. avoid using a written purchase contract.
- D. only disclose if asked directly.