



FITZPATRICK
REAL ESTATE SCHOOL

who's the **BOSS**



3 Hours of Agency
Continuing Education

CE.6901000-RE

Approved by the Division on Behalf of the Commission

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.

In 2021, with 40 years of experience, Joe opened Fitzpatrick Real Estate School 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 3 hours 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 10 Checkpoints as they are displayed throughout the videos.
- take the 10-question quiz found in the outline.
- complete the course evaluation upon the conclusion of the course.
- submit the (1) Quiz answers, (2) Online View Worksheet, and the (3) Course Evaluation using the links provided directly above the 3 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 3 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 Nevada Real Estate Division, on behalf of the Commission, 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 three-hour presentation and spend the three hours required to earn a three-hour 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;
- having 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?

PLEASE SUBMIT USING THE LINK ABOVE THE 3 VIDEOS ON THE WEBSITE.

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 peek at the Nevada Real Estate Division’s publication “Open House” and see for yourself all the many disciplinary actions imposed by the Commissioners on licensees who either don’t understand their duties – or don’t care.

In the 2019 Nevada Legislative Session, the entry requirement for licensure was increased from 90 re-licensing hours to 120 with 15 of those hours dedicated to the subject of contracts as prepared by a licensee as well as 15 hours on the subject of agency. That’s a lot of hours on agency! The existing 90-hour course already includes 21 hours on the topics of brokerage and agency.

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. Dual Agency vs. Designated Agency

A. Dual Agency

1. agent represents both parties in the same transaction
2. “multiple representation”
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 Act*
 - b) *neither* party is obligated to go along with such representation
 - c) options for that client include:
 - find another agent
 - represent yourself
 - ask the broker to designate another licensee (designated agency/assigned agency)
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. 9 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)

B. Designated Agency (Assigned Agency)

1. broker is allowed to assign one agent to represent the seller and another agent in the firm to represent the buyer
2. In Nevada, no Consent to Act (not a dual agency)
3. broker's role is unclear (we say the broker is still a dual agent!)
4. Designated Agency Video: <https://www.youtube.com/watch?v=6I273AK32NM> (5 mins)
5. company policy

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?

V. Nevada Laws on Agency

NRS 645.252 Duties of licensee acting as agent in real estate transaction. A licensee who acts as an agent in a real estate transaction:

1. Shall disclose to each party to the real estate transaction as soon as is practicable:
 - a. 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
 - b. each source from which the licensee will receive compensation
 - c. that the licensee is a principal to the transaction or has an interest in a principal to the transaction.
 - d. that the licensee is acting for more than one party to the transaction

NRS 645.253 Licensees affiliated with same brokerage: Additional duties when assigned to separate parties to real estate transaction.

1. Designated Agency / Assigned Agency
2. If a real estate broker assigns different licensees affiliated with his or her brokerage to separate parties to a real estate transaction, the licensees are not required to obtain the written consent [in the event of representing both parties to the same transaction.]
3. Each licensee shall not disclose, except to the real estate broker, confidential information...

NRS 645.254 Additional duties of licensee entering into brokerage agreement to represent client in real estate transaction. A licensee who has entered into a brokerage agreement to represent a client in a real estate transaction:

1. Shall exercise reasonable skill and care...
2. Shall not disclose confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement
3. Shall seek a [transaction] at the price and terms stated in the brokerage agreement or... acceptable to the client
4. Shall present all offers made to or by the client as soon as is practicable...
5. Shall disclose to the client material facts of which the licensee has knowledge concerning the transaction
6. Shall advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and

7. Shall account for all money and property the licensee receives in which the client may have an interest as soon as is practicable.

NRS 645.257 Action to recover damages suffered as result of licensee’s failure to perform certain duties; standard of care.

1. A person who has suffered damages as the proximate result of a licensee’s failure to perform any duties required by [NRS 645.252](#), [645.253](#) or [645.254](#) ... may bring an action against the licensee for the recovery of the person’s actual damages.

NRS 645.300 Delivery of copy of written brokerage agreement; receipt.

- licensee shall deliver a copy of the written brokerage agreement to the client signing it at the time the signature is obtained, if possible, or otherwise within a reasonable time thereafter

NRS 645.320 Requirements for exclusive agency representation. Every brokerage agreement which includes a provision for an exclusive agency representation must:

1. Be in writing.
2. specified and complete termination [date].
3. no automatic renewal
4. Be signed by both the client ... and the broker...

NRS 645.3205 Dealing with party to real estate transaction in manner which is deceitful, fraudulent or dishonest prohibited. A licensee shall not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.

NAC 645.605 Considerations in determining certain misconduct by licensee. ([NRS 645.050](#), [645.190](#), [645.633](#)) In determining whether a licensee has been guilty of gross negligence or incompetence under paragraph (h) of subsection 1 of [NRS 645.633](#) or conduct which constitutes deceitful, fraudulent or dishonest dealing under paragraph (i) of that subsection, the Commission will consider, among other things, whether the licensee:

1. Has done his or her utmost to protect the public against fraud, misrepresentation or unethical practices related to real estate or time shares.
2. Has ascertained all pertinent facts concerning any time share or property for which the licensee accepts an agency.
3. Has attempted to provide specialized professional services concerning a type of property or service that is outside the licensee’s field of experience or competence without the assistance of a qualified authority unless the facts of such lack of experience or competence are fully disclosed to his or her client.
4. Has disclosed, in writing, his or her interest or contemplated interest in any property or time share with which the licensee is dealing. The disclosure must include, but is not limited to, a statement of:
 - (a) Whether the licensee expects to receive any direct or indirect compensation, dividend or profit from any person or company that will perform services related to the property and, if so, the identity of the person or company;
 - (b) The licensee’s affiliation with or financial interest in any person or company that furnishes services related to the property;
 - (c) If the licensee is managing the property, his or her interest in or financial arrangement with any person or company that provides maintenance or other services to the property;

(d) If the licensee refers one of his or her clients or customers to another person or company, such as a contractor, title company, attorney, engineer or mortgage banker, the licensee’s expectation of a referral fee from that person or company; and

(e) If the licensee receives compensation from more than one party in a real estate transaction, full disclosure to and consent from each party to the real estate transaction. A licensee shall not accept compensation from more than one party in a real estate transaction, even if otherwise permitted by law, without full disclosure to all parties.

5. Has kept informed of current statutes and regulations governing real estate, time shares and related fields in which he or she attempts to provide guidance.

6. Has breached his or her obligation of absolute fidelity to his or her principal’s interest or his or her obligation to deal fairly with all parties to a real estate transaction.

7. Has ensured that each agreement for the sale, lease or management of property or time shares is contained in a written agreement that has been signed by all parties and that his or her real estate broker and each party to the real estate transaction has a copy of the written agreement.

8. Has obtained all changes of contractual terms in writing and whether such changes are signed or initialed by the parties concerned.

9. Understands and properly applies federal and state statutes relating to the protection of consumers.

10. Has acquired knowledge of all material facts that are reasonably ascertainable and are of customary or express concern and has conveyed that knowledge to the parties to the real estate transaction.

11. Has impeded or attempted to impede any investigation of the Division by:

(a) Failing to comply or delaying his or her compliance with a request by the Division to provide documents;

(b) Failing to supply a written response, including supporting documentation, if available;

(c) Supplying false information to an investigator, auditor or any other officer of the Division;

(d) Providing false, forged or altered documents; or

(e) Attempting to conceal any documents or facts relating to a real estate transaction.

NAC 645.630 Prompt tender of offers. ([NRS 645.050](#), [645.190](#)) A licensee shall promptly deliver:

1. To the seller, every bona fide offer, complete with all terms and conditions of purchase, which he or she obtains.

2. To the purchaser and seller, copies of each acceptance of an offer or counteroffer.

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 Act
- 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

B. Possible Disciplinary Actions:

- The Commission may require a licensee, property manager or owner-developer to pay an administrative fine of not more than \$10,000 for each violation he or she commits or suspend, revoke, deny the renewal of or place conditions upon his or her license, permit or registration, or impose any combination of those actions...

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. How is this sale impacted if Mary never informed the buyers of her relationship with the buyers?
6. What would happen if the buyers told Mary that they would go \$10,000 higher if it meant getting the house?

B. Disciplinary Actions pertaining to Breach of Agency

“Gavin,” broker, violated [NRS 645.633\(1\)\(h\) and/or \(i\)](#), pursuant to [NAC 645.525](#), by participating in the naming of a false consideration in the Purchase Agreement; [NRS 645.633\(1\)\(h\) and/or \(i\)](#), pursuant to [NAC 645.605\(6\)](#), by breaching his obligation to deal fairly with all parties to a real estate transaction; and [NRS 645.633\(1\)\(h\) and or \(i\)](#), pursuant to [NAC 645.605\(1\)](#), by failing to do his utmost to protect the public against misrepresentation or unethical practices related to real estate.

\$30,000 fine; Brokers License downgraded to a Broker-Sales license; Cannot manage any licensees for a period of two (2) years; Agency: 3 Hours; Ethics: 3 Hours

“Kevin,” Salesperson, violated [NRS 645.252\(1\)\(b\) and \(2\)](#) by failing to properly inform the buyer that the buyer would be responsible for paying Respondent's commission; [NRS 645.633\(1\)\(h\) and/or \(i\)](#), pursuant to [NAC 645.605\(6\)](#), by falsely telling the buyer that the seller would be paying Respondent's commission; [NRS 645.633\(1\)\(i\)](#), pursuant to [NAC 645.605\(11\)\(c\)](#), by falsely telling the Division that he informed the title company that the buyer was not responsible for paying Respondent's commission. Restitution to the complainant in the amount of \$6,500; \$1,250 fine; Agency: 3 Hours; Ethics: 3 Hours

“Tod,” Broker/Property Manager, violated [NRS 645.633\(1\)\(h\)](#) by acting with gross negligence or incompetence and/or [NRS 645.633\(1\)\(i\)](#) by conduct which constituted deceitful or dishonest dealing in performing any act for which Respondent is required to hold a license, pursuant to [NAC 645.605\(1\)](#) by not doing his utmost to protect the public against fraud, misrepresentation or unethical practices related to real estate. Respondent violated [NRS 645.633\(1\)\(h\)](#) on four (4) occasions by acting with gross negligence or incompetence and/or [NRS 645.633\(1\)\(i\)](#) by conduct which constituted deceitful or dishonest dealing in performing any act for which Respondent is required to hold a license, pursuant to [NAC 645.605\(6\)](#) by breaching his obligation of absolute fidelity to his principal's interest. Respondent violated [NRS 645.252\(1\)\(a\) and \(2\)](#) by failing to disclose as soon as practicable any material and relevant facts or information which the licensee knows, or which by the exercise of reasonable diligence should have known. \$7,500 fine; Broker Mgmt: 6 hours; Ethics: 6 hours; Property Mgmt: 6 hours

“Dennis,” Broker-salesperson, violated [NRS 645.254\(5\)](#) by failing to disclose to the Complainant material facts of which the Respondent had knowledge concerning the transaction. Respondent violated [NRS 645.254\(6\)](#) by failing to advise the Complainant to obtain advice from an expert relating to matters which are beyond the expertise of the licensee. Respondent violated [NRS 645.633\(1\)\(h\)](#), pursuant to [NAC 645.905\(9\)](#), by failing to properly apply federal and state statutes relating to protection of consumers. \$30,000 fine; Respondent shall refrain from engaging in any transactions involving self-directed IRA accounts for a period of 24 months.

“Carine and Boris,” Salespersons/Property Managers, violated [NRS 645.252\(1\)\(b\)](#) on five occasions by not disclosing to each party as soon as practicable each source from which she received compensation as a result of a real estate transaction. Also, violated [NRS 645.630\(1\)\(b\)](#) on five occasions by making false promises of a character likely to influence, persuade or induce, and violated [NRS 645.633\(1\)\(h\)](#) on five occasions by not disclosing her interest in and compensation from a company that allegedly made repairs. \$5,000 fine each; Salesperson licenses revoked.

“Dale,” Salesperson, convinced owners to sell a \$372,000 condo to his cousin for \$137,800 with the agreement they could buy it back for the purchase price plus \$10,000 in six months. After the transaction was complete, he had no further contact with the former owners. Respondent violated [NRS 645.633\(1\)\(i\)](#) for facilitating the agreement and breaching his obligation of absolute fidelity. Additionally, he failed to: disclose his relationship with buyer in writing; provide paperwork for the transaction to his broker; and produce documents and a written response to the Division. \$60,000 fine; Salesperson license revoked.

“Robert, Salesperson, allegedly negotiated a sale, exchange or lease of real estate directly with a client he knew had a brokerage agreement in force in connection with the property, granting an exclusive agency without permission in writing from the broker. Additionally, allegedly included a party to a brokerage agreement to break it in order to substitute a new agreement, in order to secure personal gain. \$5,000 fine; Agency: 3 hours; Ethics: 3 hours

“Susanne,” Salesperson, forged continuing education certificates and a brokers signature on an application for reinstatement. Failed to supply a written response to the Division. Salesperson license revoked; \$30,000 fine

“Elsie,” Salesperson, failed to do her utmost to protect the public against fraud, misrepresentation or unethical practices related to real estate, converting money to her own use from a general account once and a security deposit account 14 times. Salesperson license revoked. \$160,000 fine

QUIZ

1. As a result of the 2019 legislative session, the number of continuing education hours required per real estate license renewal was increased from 24 hours to:
 - a. 32.
 - b. 36.
 - c. 40.
 - d. 45.

2. The term “multiple representation” is another term for:
 - a. MLS™.
 - b. assigned agency.
 - c. dual agency.
 - d. transactional brokerage.

3. Which of the following statements regarding an agent representing both parties to the transaction is FALSE?
 - a. A Duties Owed form is required.
 - b. A Consent to Act form is required.
 - c. Informed, written consent is required.
 - d. It is legal in all 50 states.

4. With a designated agency relationship:
 - a. one agent of the firm is assigned to represent the seller exclusively and one agent of the firm is assigned to represent the buyer exclusively.
 - b. the broker’s role is clearly a dual agent.
 - c. a Consent to Act form is required.
 - d. the firm cannot utilize this relationship on an in-house sale.

5. A Nevada real estate licensee shall disclose to each party to the real estate transaction as soon as is practicable:
 - a. any material and relevant facts known.
 - b. that the licensee is a principal to the transaction.
 - c. that the licensee is acting for more than one party to the transaction.
 - d. All of the above

6. The duty of confidentiality in Nevada 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. Every brokerage agreement which includes a provision for an exclusive agency representation must also include all of the following EXCEPT:
 - a. be in writing.
 - b. include a specified termination date.
 - c. an automatic renewal clause
 - d. be signed by both the client and the broker to be enforceable.

8. The Commission may impose a financial penalty of what amount per violation of the licensing law?
 - a. \$5,000
 - b. \$10,000
 - c. \$25,000
 - d. Any amount the Commission deems appropriate.

9. An in-house sale MUST be treated as a:
 - a. single agency.
 - b. dual agency.
 - c. assigned agency.
 - d. It depends on the broker’s policies.

10. ___ hours of agency continuing education is required for every license renewal.
 - a. 3
 - b. 6
 - c. 9
 - d. None of the above

***PLEASE SUBMIT USING THE LINK ABOVE THE 3 VIDEOS ON THE WEBSITE.
PLEASE ALSO SUBMIT YOUR COURSE EVALUATION.***