



"LEGALITIES OF CONTRACTS"



3 Hours of Contracts Continuing Education
Internet Delivery

Approved by the Division on Behalf of the Commission

Participant Outline

JOSEPH R. FITZPATRICK



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, 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: Legalities of Contracts

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

Course Overview:

- We will cover the legal aspects of contracts and the impact of contracting upon the parties. Topics include:
 - Why is it important for a licensee to understand the legalities of contracts?
 - types of contracts
 - essential elements of contracts
 - enforceability
 - legal terms
 - the impact of breach and performance

Why is it important for licensee to understand the legalities of contracts?**I. Technically, what is a Contract?**

- a written or spoken agreement, where the parties agree to do, or not to do, something of a legal nature, for the exchange of services and consideration.
- It begins with an offer.
 - An offer becomes a contract when an offer has been accepted by the offeree and communication of that acceptance is delivered to the offeror.

Types of Contracts

- Expressed
 - contract uses “words”
 - is either written or oral
 - demonstrates the intentions of the parties
- Implied
 - assumed to exist based upon the actions of the parties
 - parties are behaving as if a contracting has occurred
 - no words were spoken or written
 - “ostensible contract”
 - parties carry out their duties and receive their rights provided they are willing
- Bilateral
 - “bi” means “two”
 - two – or both – parties are *bound to perform*
 - most contracts are bilateral
 - both parties are making promises and receiving rights
 - one party’s duty is the other party’s right
- Unilateral
 - binding only upon one party *should* the other party *choose* to perform
 - the party with the option does not ever have to perform
 - option contracts and lease option agreements
- Executed
 - fully and completely performed
 - can also mean that the contract has been fully signed by all parties
- Executory
 - still has rights and duties to be performed

II. Essential Elements of a Contract

- **Competent Parties.** The parties must be competent to enter into an agreement, meaning they are living, of lawful age, of sound mind, and mentally sound.
- **Offer and Acceptance.** There must have been an offer which was eventually accepted (perhaps after counteroffers). There was a “meeting of the minds,” mutually agreeable to all parties (also called mutual assent).
- **Legality of Object.** The purpose of the transaction must be legal in nature.
- **Informed Parties.** The parties were aware of what they were doing at the time of contracting, were fully informed, and willingly agreed to the terms. There can be no fraud, misrepresentation, or duress that would have misled a party into entering into the agreement.
- **Consideration.** Consideration in a contract usually comes in the form of money, but may be anything of value. Some older documents refer to consideration as “for continued love and affection” or “for good and valuable consideration.”
- The acronym “COLIC” is often used to remember these five essential elements of *any* contract
- **STATUTE OF FRAUDS:** Real Estate Contracts and Personal Property Valued Over \$500 Require the Contract to be in Writing to be Enforceable.

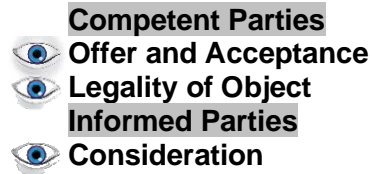
III. Contract Performance

- **Valid**
 - contains all five essential elements (COLIC)
 - legal and binding upon the parties
 - parties must perform their duties or are in **breach**
 - If a contract is missing any of the essential elements, it is either void or voidable.
- **Void**
 - missing offer and acceptance, legality of object, or consideration; “visible”
 - could look at the “four corners of a contract” and see if these three elements exist in the agreement
 - if any of the three is missing, the contract is void
 - no binding effect upon the parties; no legal contract
 - as if there were never a contract at all

- ✓ **Competent Parties**
- ✓ **Offer and Acceptance**
- ✓ **Legality of Object**
- ✓ **Informed Parties**
- ✓ **Consideration**

-  **Competent Parties**
-  **Offer and Acceptance**
-  **Legality of Object**
-  **Informed Parties**
-  **Consideration**

- **Voidable**
 - missing competent parties or informed parties
 - “not visible;” refer to the parties
 - contract can be declared void and have no binding effect.
 - contracts are voidable by the person with the disadvantage



- **Unenforceable**
 - Some contracts are required to be in writing *in order to be enforced in a court of law.*
 - if the parties get into a dispute and wish to take the matter before the court, the contract has to be in writing and signed
 - Statute of Frauds: contracts for the sale of real property, or personal property valued at \$500 or more, must be in writing in order to be enforceable in court.

MATCHING

- | | |
|-------------------|--|
| ___ VOID | A. Associated with Statute of Frauds |
| ___ VALID | B. In writing or oral |
| ___ VOIDABLE | C. Exchange of Duties and Rights |
| ___ UNENFORCEABLE | D. Contains All 5 Essential Elements |
| ___ EXPRESSED | E. Missing visible essential element |
| ___ CONSIDERATION | F. Missing invisible essential element |
| ___ CONTRACT | |

Note there is one without a match!

ARE YOU GETTING THIS?

True or False?

All contracts for the sale of real estate must be in writing.

16-year-old Maria enters into an enrollment agreement with a ballet school.

VALID VOID VOIDABLE UNENFORCEABLE

Bob hires a contractor to build a single-family home on a lot zoned for agricultural use.

VALID VOID VOIDABLE UNENFORCEABLE

Two cowboys agree on a handshake for one to sell the other his old ranch for \$200,000.

VALID VOID VOIDABLE UNENFORCEABLE

Larry has been drinking all day and has a blood alcohol level of .029. He stops on his way home and buys a new pickup truck from the local dealership.

VALID VOID VOIDABLE UNENFORCEABLE

IV. Technical Terms

- **Time is of the essence**
 - If a specific time frame/deadline has been established in the sales contract, whereby one of the parties is to perform something by that deadline, it *must* be completed by the deadline or the other party may declare a breach.
 - At that point, the contract becomes voidable.
 - Example: buyer is to make loan application within 5 days of acceptance:
 - if not done on time, seller can rescind
 - or seller can proceed with the contract in the hopes the buyer performs as required
- **Breach**
 - failure or refusal to perform duties as required by the contract
- **Specific Performance**
 - a legal action will require the buyer or seller to perform all duties as specified in the contract
- **Revocation**
 - option for seller, due to the buyer's breach, allows the seller to revoke (cancel) the contract and retain the earnest money deposit
- **Rescission**
 - one of the parties decides to call off the contract
 - return the earnest money deposit to the buyer
 - rescission is a complete reversal of the contract
 - putting everyone back to where they were before contracting which includes returning the earnest money deposit to the buyer
 - house might go back on the market
- **Statute of Limitations**
 - a legal limit to the time frame under which the injured party can legally sue the breaching party
 - limit varies from state to state and depends on the nature of the suit
- **Parol Evidence Rule**
 - oral words or representations will not be binding upon either party in a contract
 - oral statements will not supersede anything in writing
 - *parol* is French for *oral*
 - if the parties want a spoken representation to be binding, put it in writing
- **Contingency**
 - a condition that must be satisfied in order for the contract to remain enforceable
 - generally, if a contingency is not satisfied, the parties agree to a rescission
- **Liquidated damages**
 - contract pre-addresses the damages that may be received in the event of default
 - Example: earnest money deposit
 - “EMD” will be sacrificed in the event of buyer default
- **Punitive damages**
 - might be awarded by a judge to “punish” the breaching party and compensate the injured party
- **Compensatory damages**
 - awarded to compensate (reimburse) the injured party for any actual losses suffered

V. Legal Impact of Contractual Terms

2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. NEW LOAN APPLICATION: Within _____ business days of Acceptance, Buyer agrees to (1) submit a completed loan application to a lender of Buyer’s choice and (2) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt-to-income ratios. If Buyer fails to complete any of these conditions within the applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer’s best efforts to obtain financing under the terms and conditions outlined in this Agreement.

B. APPRAISAL CONTINGENCY: Buyer’s obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a “Notice of Appraised Value”) Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than _____ calendar days following the date of Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.**

Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.

3. SALE OF OTHER PROPERTY:

A. This Agreement is NOT contingent upon the sale of any property owned by the Buyer. **–OR–**

B. ☐ (if checked): The attached Contingent Upon Sale Addendum is hereby incorporated into this agreement.

7. BUYER’S DUE DILIGENCE: Buyer’s obligation ☐ **is –OR–** ☐ **is not** conditioned on the Buyer’s Due Diligence as defined in this section 7(A) below. This condition is referred to as the “Due Diligence Condition” if checked in the affirmative, Sections 7 (A) through (C) shall apply; otherwise, they do not. Buyer shall have _____ calendar days following the date of Acceptance of the RPA (as defined in Section 23 herein) to complete Buyer’s Due Diligence. Seller agrees to cooperate with Buyer’s Due Diligence. **Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer’s investigations and through the close of escrow.**

B. BUYER’S RIGHT TO CANCEL OR RESOLVE OBJECTIONS: If Buyer determines, in Buyer’s sole discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller, whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in writing with Seller any objections Buyer has arising from Buyer’s Due Diligence.

C. FAILURE TO CANCEL OR RESOLVE OBJECTIONS: If Buyer fails to cancel the Residential Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer’s Due Diligence, as provided in Section 7, **Buyer shall be deemed to have waived the Due Diligence Condition.**

10. COMMON-INTEREST COMMUNITIES: If the Property is subject to a Common Interest Community (“CIC”), **Seller shall provide AT SELLER’S EXPENSE the CIC documents as required by NRS 116.4109** (collectively, the “resale package”). Seller shall request the resale package within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller’s receipt thereof.

- Pursuant to NRS 116.4109, Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package. If Buyer elects to cancel this Agreement pursuant to this statute, he/she must deliver, via hand delivery, prepaid U.S. mail, or electronic transmission, a written notice of cancellation to Seller or his or her authorized agent.
- If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty. Notice of cancellation shall be delivered pursuant to Section 24 of the RPA.
- Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

B. IF SELLER DEFAULTS: If Seller defaults in performance under this Agreement, Buyer reserves all legal and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer’s actual damages incurred by Buyer due to Seller’s default.

C. IF BUYER DEFAULTS: If Buyer defaults in performance under this Agreement, as Seller’s sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this respect, the Parties agree that Seller’s actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer’s default. Seller understands that any additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW HOLDER to Buyer.

27. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney’s fees and costs incurred by such prevailing party.

VI. TERMINATION OF CONTRACTS

- **Performance.** Being the most desirable outcome, performance refers to the parties performing all of their duties and receiving all of their rights.
- **Mutual agreement.** Both parties decide they do not want to proceed with the contract and mutually agree to release each other.
- **Impossibility.** If an issue arises making it truly impossible for the parties to perform, the contract will have to be terminated by impossibility. For instance, a contract on a home that is destroyed due to fire may be terminated by impossibility.
- **Operation of law.** Some contracts cannot be performed because doing so would be an illegal act. Remember that “legality of object” is required of a valid contract.

Window to the Law – NAR Video

VII. Quick Review of the RPA – Video

VIII. Practice Quiz

IX. Actual Quiz

Legalities of Contracts Quiz

1. The appraisal contingency in the RPA reads, “If this residential purchase agreement is not cancelled, in writing on or before the appraisal deadline, Buyer shall have deemed to waive the appraisal contingency.” What does this mean?
 - a. If the buyer has not canceled, and the appraisal has still not been completed, the buyer may no longer use the appraisal as a basis for rescission.
 - b. If the appraisal comes in at a value lower than the contracted price, the parties have been unable to renegotiate, and the buyer has not canceled, the buyer will have to make up the difference in cash.
 - c. Buyers who waive their appraisal contingency, may very well be cheating themselves out of very important legal protection.
 - d. All of the above
2. If the buyers are unable to obtain financing for the purchase, they are *obligated* to:
 - a. be able to purchase all cash.
 - b. demonstrate they have the funds available with a specified number of days of acceptance.
 - c. cancel per the contingency in order to receive the EMD.
 - d. All of the above
3. Who pays for the CIC resale package?
 - a. the buyers.
 - b. the sellers.
 - c. split evenly between the parties.
 - d. the broker.
4. When does an offer technically become a contract?
 - a. when it is accepted by the seller
 - b. when it is accepted by either party
 - c. when it is accepted and signed by either party
 - d. when it is accepted, signed, and communicated to the offeror
5. An “expressed” contract:
 - a. can be oral.
 - b. must be in writing.
 - c. is based on the actions of the parties.
 - d. All of the above
6. An “ostensible” contract is:
 - a. an oral agreement.
 - b. uses words.
 - c. is based on the actions of the parties.
 - d. None of the above

7. How many parties are there in a unilateral contract?
 - a. one
 - b. two
 - c. three or more
 - d. Any of the above
8. Which of the following is NOT an essential element of a contract?
 - a. earnest money
 - b. purchase price
 - c. a legal purpose
 - d. meeting of the minds
9. Real estate contracts and personal property valued over \$500 require the contract to be in writing to be enforceable per the:
 - a. Statute of Limitations
 - b. Statute of Frauds
 - c. Statute of Obligations
 - d. Statute of Liberty
10. A contract that is missing offer and acceptance, legality of object, or consideration is considered:
 - a. valid
 - b. void
 - c. voidable
 - d. unenforceable

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