

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of**

Louisiana Real Estate Appraisers Board,  
Respondent.

Docket No. 9374

**JOINT MOTION FOR ORDER CONCERNING  
REMOTE DEPOSITION PROTOCOLS**

Complaint Counsel and Respondent, Louisiana Real Estate Appraisers Board, hereby jointly move the Court to enter the attached Stipulation and Order Concerning Remote Deposition Protocols to govern depositions taken remotely in this litigation.

Dated: March 10, 2021

Respectfully submitted,

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Louisiana Real Estate Appraisers Board,  
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**STIPULATION AND ORDER CONCERNING  
REMOTE DEPOSITION PROTOCOLS**

WHEREAS, due to the COVID-19 pandemic and a mutual desire to protect the health and safety of the deponents, the court reporters, and counsel, Complaint Counsel and Respondent, Louisiana Real Estate Appraisers Board, agree to and jointly request that the Court approve this Stipulation and Order Concerning Remote Deposition Protocols (the “Protocol”).

NOW, THEREFORE, IT IS HEREBY ORDERED:

**I. Definitions**

1. “Attending Counsel” shall mean any legal counsel for a party who is not Deposing Counsel or Defending Counsel, but who is attending a Remote Deposition either in person or remotely.
2. “Court Reporter” includes the stenographer and the video recorder who maintain a record of the deposition.
3. “Defending Counsel” means legal counsel representing the Witness. In the event a non-party Witness does not have counsel, then “Defending Counsel” shall mean the Witness.
4. “Deposing Counsel” means the legal counsel of the Party or Parties noticing or questioning the Witness at a Remote Deposition.
5. “Expert Witness” means any expert identified by a party pursuant to Rule 3.31A of the Part 3 Rules of Practice for Adjudicative Proceedings (the “Part 3 Rules of Practice”).
6. “Noticing Party” means a party that noticed the Remote Deposition of the Witness pursuant to Rule 3.31A or 3.33 of the Part 3 Rules of Practice.
7. “Platform” means the video-conferencing computer application that the Noticing Party utilizes to enable a Remote Deposition in accord with this Protocol.

8. “Primary Counsel” means counsel designated by the Parties and the Witness at the beginning of the Remote Deposition, as provided in Paragraph 20.
9. “Remote Deposition” means any deposition by oral examination taken in this case for the purposes of discovery pursuant to Rule 3.31A or 3.33 of the Part 3 Rules of Practice where fewer than all of the participants—including Deposing Counsel, Defending Counsel, the Witness, or the Court Reporter — are physically present in the same location at the time the deposition is taken but instead participate by means of the Platform.
10. “Witness” means the person or entity whose Remote Deposition is taken. “Witness” includes, but is not limited to, any Expert Witness.

## **II. Agreement to Conduct Remote Depositions**

11. Remote Depositions shall be taken in compliance with applicable federal regulations and orders governing depositions, except as specifically provided herein, and any applicable regulations, orders, or guidance related to the COVID-19 pandemic.
12. All future depositions in this case shall be Remote Depositions. A copy of this Protocol shall be provided to each Witness or Defending Counsel. The Noticing Party shall serve a copy of this Protocol with any subpoena for a Remote Deposition.
13. The Parties hereby expressly waive any objection to any Remote Deposition, or to the admissibility of any Remote Deposition testimony, that is based solely on the ground the deposition was conducted remotely. Testimony during a Remote Deposition may be used in these proceedings as if the deposition was conducted in person.
14. Notwithstanding any other rule to the contrary, the Parties stipulate that, at the discretion of the Court Reporter, the Witness’s oath or affirmation may be administered, and the transcript of the deposition may be recorded, remotely.

## **III. Technology to be Used for Remote Depositions**

15. Any Platform must allow for the Court Reporter to accurately record, and for all participating attorneys and the Court Reporter to hear and see the Witness and all Primary Counsel at all times.
16. The Noticing Party shall be responsible for arranging the taking of a Remote Deposition, including retention of the Court Reporter and of a vendor that will provide a Platform that meets the requirements of, and that will be used consistent with, this Protocol.
17. The Noticing Party shall ensure that email invitations to attend the Remote Deposition are sent to the Witness, the Court Reporter, and any Defending or Attending Counsel who, no later than three (3) days before the deposition, shall inform the Noticing Party of

their intent to attend the deposition and provide their email address and phone number to the Noticing Party and the Court Reporter.

18. The Parties shall ensure that the Witness has access to technology that meets the minimum standards required by the Platform to ensure the transmission of audio and video feeds via the Platform.
19. Remote Depositions subject to this Protocol shall be recorded by stenographic means. Either Party may also request a video recording of the deposition, at the requesting Party's expense. Each Party will bear its own costs for copies of transcripts and copies of video recordings of any deposition. Neither video recording nor stenography shall occur when the Parties are off the record. No one other than the Court Reporter may use video, audio, or still images to record any part of a Remote Deposition.
20. Prior to the start of a Remote Deposition, each of the Parties shall identify no more than one counsel each to serve as Primary Counsel. If the Witness is a non-party Witness, the Witness may also identify no more than one counsel to serve as the Witness's Primary Counsel during the Remote Deposition.
21. Unless the Parties agree otherwise, the video feed visible to the Witness shall be limited to the images of Primary Counsel, the Court Reporter, and the Witness, and any exhibits being displayed to the Witness.
22. The Parties may agree to utilize a "chat" feature on the Platform to communicate with the Witness or the Court Reporter only if the chat feed is available and displayed to Attending Counsel and the Court Reporter throughout the deposition. Any chat feature shall be used solely for the purpose of allowing Primary Counsel, the Witness, and the Court Reporter to alert one another about any technical issues that arise during the deposition. All other "chat," instant message, and/or texting features that may be visible to or used to communicate with the Witness are prohibited and shall be disabled during the deposition if possible. Electronic breakout rooms on the Platform may be enabled only for breaks and recesses off the record.
23. Each Primary Counsel shall ensure that they have a means of communicating with co-counsel or the Witness, as appropriate, during breaks in the deposition. The Parties agree not to oppose reasonable accommodations to allow such conferences during breaks, as well as communications among co-counsel during the Remote Deposition.

#### **IV. Technical Difficulties**

24. The Parties and the Witness may elect to have a technical specialist attend a Remote Deposition to ensure that technical issues are resolved in a timely manner.
25. If technical difficulties result in the inability of any Primary Counsel or the Witness to receive the audio feed, video feed, or exhibits used in a Remote Deposition, the deposition shall be paused. The remaining Primary Counsel shall note the disconnection

on the record as soon as they become aware of it. The deposition must immediately be suspended until the disconnected person has re-joined the deposition and has full access to both audio and video. Any portion of the deposition that has been transcribed while a Primary Counsel or the Witness was disconnected or was experiencing technical difficulties must be re-read upon the resolution of the technical difficulty, and the disconnected Primary Counsel must be given an opportunity to object to any questions or answers that occurred in their absence. If the technical difficulties cannot be resolved, then the deposition shall be suspended until the technical difficulties are resolved by the Parties or, if necessary, by order of the Court.

26. If at any time the Court Reporter indicates that they are unable to transcribe or record the deposition due to technical difficulties, the deposition shall be paused and the Parties and the Court Reporter shall attempt to resolve those issues. The suspended time will not count against the time allowed for the deposition. If the technical difficulties cannot be resolved to the satisfaction of the Court Reporter, the deposition shall be suspended.
27. If technical difficulties arise during the taking of a Remote Deposition, counsel for the Parties must meet and confer as soon as is practicable, by telephone or other means, to determine whether the Remote Deposition can proceed or should be continued to a future date. If technical difficulties arise that make the completion of a Remote Deposition impracticable, counsel for Parties and the Witness shall resume the Remote Deposition at a mutually convenient opportunity within a reasonable period of time.

## V. Exhibits

28. The preferred method of marking and using exhibits at a Remote Deposition is through the Platform. The Noticing Party is responsible for ensuring that any exhibits marked and used at a Remote Deposition can be displayed to the Witness, the Court Reporter, and Attending Counsel in a manner that is legible.
29. Any Party that wishes to use a hard copy of any exhibits during a deposition must provide the Primary Counsel, the Witness, and the Court Reporter a physical copy of the exhibits no fewer than 24 hours before the start of the deposition. Each recipient of the physical copies of the exhibits shall not review any exhibit until it is introduced as an exhibit by the Party at the Remote Deposition. Notwithstanding the use of a physical copy, an exhibit introduced by the Party shall also be marked through the Platform if practical. The electronic copy will be the official exhibit, absent agreement otherwise by the Parties. If a Party provides documents in sealed envelopes, the recipients shall not open the envelopes until asked to do so during the Remote Deposition and shall only open the envelopes on the record. Non-party Witnesses and their Defending Counsel shall not retain any copies of documents sent in advance of or used during the deposition and shall confirm that they will return or destroy any such documents at the end of the deposition.
30. If, during the course of questioning, the Witness wishes to review a document that is being displayed, the Deposing Counsel shall facilitate access to all other portions of the document requested by the Witness before requiring an answer to the question. Other

Primary Counsel shall make a good faith effort to assist the Deposing Counsel in displaying the other portions of the document or transcript to the Witness.

31. If the Platform does not permit the Court Reporter to mark exhibits remotely, Deposing Counsel shall be responsible for marking exhibits and ensuring that such marks are communicated to the Court Reporter during or as soon as is practicable after the deposition.
32. The Parties shall use a Platform that will allow the Witness and all Primary Counsel to have a complete copy and personal control of each exhibit when it is introduced and through the duration of the deposition. To the extent that such functionality is not available for any exhibit during a deposition, the deposition shall be suspended until the resolution of the technical difficulties, and the Parties shall make best efforts to resume the deposition as expeditiously as possible.

## **VI. Miscellaneous Provisions**

33. The Parties shall conduct a joint test of a Platform prior to taking the first Remote Deposition using that Platform. A Party that fails to participate in such a test shall waive any objections to using the Platform. The Noticing Party shall conduct a test of the Platform with the technology it intends to use to participate in a Remote Deposition before the time at which a Remote Deposition is scheduled to begin. A Party is responsible for conducting the joint test of the Platform on behalf of its attorneys, officers, directors, employees, agents, and expert witnesses.
34. No person may be physically located in the same room as the Witness during a Remote Deposition except a non-attorney who is present solely for the purpose of providing technical assistance to the Witness. At the beginning of the Remote Deposition, every person logged onto the Platform or otherwise viewing or listening to the deposition must be identified for the record. Any person joining or leaving the deposition after it begins must be identified at the time of their arrival or departure.
35. During on-the-record portions of a Remote Deposition, the Witness may not communicate with any person, except through the Platform, by any means, including gestures, handwritten communications, email, chat, instant messaging, text messaging, or phone. Except as provided in Paragraph 22, any chat features provided in a Platform shall not be used and must be disabled if possible. This restriction does not apply to conversations between the Witness and Defending Counsel during breaks or other recesses not on the record, which can occur in breakout rooms provided by the Platform or other means, to the extent such breaks or recesses and any such conversations taking place during them occur in the manner permitted under applicable rules and procedures.
36. The Witness may not review, read, have before them, or otherwise access any document, including email, text, web pages, social media, video, audio, or any other material, except documents presented to the Witness as exhibits during the Remote Deposition, without the express consent of counsel for all Parties. During the deposition, the Witness shall not

consult any outside sources of information, including cell phones, smart phones, computers, the Internet, text or instant messaging services, emails, chats, blogs, or websites such as Twitter, Facebook, or LinkedIn, to obtain information in connection with his or her testimony. Notwithstanding the foregoing, an Expert Witness may review, read, have before them, or otherwise access a hard copy of any report prepared by that Expert Witness in this matter, whether or not that document has been presented as an exhibit during the Remote Deposition.

37. All persons attending depositions taken by remote means are reminded that the typical rules of professionalism and etiquette during depositions still apply. All persons attending depositions taken pursuant to this order who do not have an immediate need to speak shall ensure that their telephone or video conference lines are muted. All persons attending depositions taken pursuant to this order shall ensure that they can do so in a space that is relatively free from distractions that would interfere with the deposition.

## **VII. Reservation of Rights**

38. Subject to the provisions of this Protocol, nothing herein shall affect the right of a Party or non-party to seek relief under Rule 3.31(d), 16 C.F.R. § 3.31(d).
39. Subject to the provisions of this Protocol, nothing herein shall constitute a waiver of any Party's rights under, or any applicable provisions of either 16 C.F.R. Part 3, Rules of Practice for Adjudicative Proceedings, or 16 C.F.R. Part 4, Miscellaneous Rules, or any Order entered in the Litigation.
40. The Parties have agreed to these Protocols only for the purpose of conducting Remote Depositions for the purposes of discovery. This Stipulation shall not apply to any remote testimony at trial or to any deposition the parties take for the purpose of presenting or preserving trial testimony.
41. This stipulation shall be effective only with the approval of the Court.

Dated: March 10, 2021

Respectfully submitted,

s/ Patricia M. McDermott  
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***Counsel for Respondent Louisiana Real Estate Appraisers Board***

On the joint request of the parties, it is hereby

ORDERED that the Stipulation shall be entered as an order in this matter.

ORDERED:

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D. Michael Chappell  
Chief Administrative Law Judge

Date:

**CERTIFICATE OF SERVICE**

I hereby certify that on March 10, 2021, I filed the foregoing document electronically using the FTC's E-Filing System and served the following via email:

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The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing document to:

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*Counsel for Respondent Louisiana Real Estate Appraisers Board*

Dated: March 10, 2021

By: s/ Patricia M. McDermott  
Patricia M. McDermott, Attorney

**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: March 10, 2021

By: s/ Patricia M. McDermott  
Patricia M. McDermott, Attorney