

Halsey Beshears, Secretary

Ron DeSantis, Governor

**Minutes of
THE FLORIDA REAL ESTATE COMMISSION
October 7, 2020
Tele-Conference/Live-Stream Emergency Meeting**

APPROVED November 2020

October 7, 2020

Chair Patti Ketcham called the special meeting of the Florida Real Estate Commission to order at approximately 4:00 p.m., via Tele-Conference/Live-Stream, on this, the 7th day of October, 2020. Executive Director Giovanna Corona conducted Roll Call with the below listed participants responding with “present.”

Commissioners

Chair Patti Ketcham – via Live-Stream
Vice-Chair Dick Fryer – via Live-Stream
Patricia Fitzgerald – via Live-Stream
Poul Hornsleth – not present, excused
Guy Sanchez – not present, excused
Randy Schwartz – via telephone

Mr. Timothy Frizzell, Senior Assistant Attorney General appeared via Live-Stream as counsel for the Commission. Mr. Frizzell declared quorum present.

Staff

Giovanna Corona, Executive Director – in person
Al Cheneler, Chief Attorney – via telephone
Emy Orellana, Regulatory Specialist III – via Live Stream
Damon Boodram, DRE Investigator - via Live Stream
Magnolia Reporting, Inc. (407) 896-1813 provided court services – via Live Stream

The purpose of the meeting was to discuss the FREC Emergency Order regarding the expiry of LiveStreaming of CE Courses and the promulgation of rules 61J2-3.008, 3.009, 3.011 and .020, Florida Administrative Code.

Vice-Chair Fryer moved; seconded by Commissioner Fitzgerald; to accept Emergency Rule Draft 3 (see attached) as presented and extend the order to December 31, 2020; the motion passed without dissent.

Vice-Chair Fryer moved; seconded by Commissioner Fitzgerald; to move forward with the proposed changes relating to 61J2-3.008, 3.009, 3.011 and .020, Florida Administrative Code with the exception of the proposed language that the 3rd Emergency Order would cover; the motion passed without dissent. Board Counsel Frizzell addressed the Commission with SERC questions:

- 1) Will the amendments directly or indirectly increase regulatory costs to any entity, including government, in excess of \$200,000.00 in the aggregate in Florida within one year after implementation?
Commission’s response – No
- 2) Will a violation of this rule or any part of this rule be designated as a minor violation?
Commission’s response – No

Executive Director’s Comments

Executive Director Corona thanked the Commission and Division staff for their commitment to licensees.

Chair’s Comments

Chair Ketcham thanked the Commission and Division staff for making time to conduct this very important meeting to ensure the necessary actions to ensure the needs of licensees and educators are met.

Public Comments

The Commission did not receive public comments from members of the audience via GoToMeeting chat.

Adjournment

There being no other business, the Chair adjourned the meeting at approximately 4:11 p.m. The next general meeting – licensing of the Florida Real Estate Commission is scheduled for October 20, 2020, via Tele-Conference/Live-Stream.

ATTEST:

Patricia “Patti” Ketcham, Chair
Florida Real Estate Commission

Giuanna Corona, Executive Director
Florida Real Estate Commission

DRAFT Language
Third Emergency Rule
September 30, 2020

Notice of Emergency Rule

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA REAL ESTATE COMMISSION
RULE NO.: RULE TITLE:

61J2ER20-___ Use of Live Streaming Technology for Delivery of Approved In-Person Education Courses

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The Florida Real Estate Commission (“FREC”) is statutorily mandated to require specified Prelicensure, Post-Licensure, School Instructor and Continuing Education (“CE”) courses as prerequisites to initial licensure, licensure renewal, and licensure reactivation of Real Estate Sales Agents, Real Estate Brokers, and Real Estate School Instructors. Pursuant to this authority, the FREC has promulgated rules setting forth the requirements for approval of Prelicensure, Post-Licensure, Reactivation, and CE courses. The rules establish different minimum criteria for in-person vs. online or distance learning courses; and courses are submitted by providers and approved/authorized by the FREC as either in-person or online/distance. If a course is approved as in-person, it cannot be offered via online or distance learning methods, unless it is also approved as an online/distance learning course.

Due to the Novel Coronavirus Disease 2019 (COVID-19) public health emergency, the State of Florida has been under continuing public health emergency orders, issued by, among others, the Governor, the State Health Officer, the secretaries of various state agencies, and local governments. While the public health emergency appears to be abating, there is a continued significant, present, real danger to the public health and welfare from the COVID-19 disease.

In order to help accomplish the public policy goal of preventing the spread of the COVID-19 disease, the FREC has promulgated two (2) prior Emergency Orders, allowing delivery of FREC approved in-person educational courses to be offered through synchronous live video streaming/videoconferencing technologies, such as Zoom®, GoToMeeting®, Microsoft Teams®, or WebEx®, among others. This has allowed the state’s real estate professionals, as well as applicants for licensure, to avail themselves of all FREC approved courses, whether “live” or “online,” while reducing the requirement for an in-person gathering of people. As part of the second Emergency Order issued by the FREC, which expires October 8, 2020, the FREC simultaneously initiated rulemaking pursuant to section 120.54, F.S., to amend the existing rules in Chapter 61J2-3, F.A.C., to make the synchronous live-streaming option available through the end of the calendar year. However, due to the minimum timeframes and statutorily requirements for adoptions of amendments to existing rules, it appears the rule amendments will not be completed prior to the expiration of the emergency rule.

The FREC has been informed that the “gap” created by expiration of the second Emergency Rule and the adoption of the proposed rule amendments will result in more than 100 educational courses currently scheduled being either cancelled or a requirement that registrants travel and physically gather in order to avail themselves of the course content. Given the continued public health emergency, the FREC finds this presents an unnecessary and imminent risk to the public health, safety, and welfare, which risk the FREC has been attempting to eliminate since publication of the first Emergency Order in June. Accordingly, the FREC, by a third emergency rule, will continue to waive the requirement that those educational courses previously approved by the FREC as live or in-person must in fact be presented “in-person,” and authorizes any such course previously approved as live to continue to be delivered by synchronous live-streaming technologies, that allow the instructor or monitor to observe each student. The Board finds that this action is a measured regulatory approach that helps to mitigate the threat of exposure to COVID-19 disease to Floridians, including Real Estate professionals and those that come in contact with them, while still satisfying the purpose and intent of the waived requirements.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: Given the fact that many providers of educational courses, as well as licensees and applicants for licensure, have relied on

the FRECs clearly enunciated policy to allow synchronous live streaming of educational courses, and have planned, developed, scheduled, registered, and paid for these courses; that the FREC diligently followed the rulemaking provisions of section 120.54, F.S. in an attempt to promulgate amendments to existing rules to accomplish this goal through the end of 2020; and that a large number of courses will either be cancelled or persons will be forced to gather in-person to receive statutorily required education; the FREC finds that the continued immediate danger to the public health, safety, or welfare due to COVID-19 disease necessitates immediate action to eliminate the gap of time between the expiration of the currently effective second Emergency Rule and the effective adoption of rule amendments. In addition, at the same meeting where this Emergency Rule was proposed, the Commission determined to withdraw the rulemaking initiated to amend the existing rules, since this third Emergency Rule will extend the effective period of allowable synchronous live streaming through the end of 2020, which was and continues to be the intent of the FREC. Notice of this meeting was published in the Florida Administrative Register in Volume 46, No. on September 29, 2020 . In addition, notice of the FREC's meeting was posted on the FREC's official website and was emailed to interested persons and entities.

SUMMARY: The proposed emergency rule authorizes the continued delivery of Prelicensure, Post-Licensure, Reactivation, Continuing Education, and School Instructor education courses previously approved by the FREC to be delivered live and in-person to be delivered via synchronous live streaming / videoconferencing technologies until December 31, 2020. After January 1, 2021, a provider wishing to continue offering courses through synchronous live streaming that technology must apply for approval following existing procedures .

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Giovanna Corona, Executive Director, Florida Real Estate Commission, Zora Neale Hurston Building, North Tower, Suite N901, 400 West Robinson Street, Orlando, Florida 32801.

THE FULL TEXT OF THE EMERGENCY RULE IS:

61J2ER- Use of Live Streaming Technology for Delivery of Approved In-Person Education Courses. For the duration of this Emergency Rule, all Florida Real Estate Commission approved providers of Prelicensure, Post-Licensure, Reactivation, Continuing Education, or School Instructor educational courses may deliver any such course, previously approved by the Commission for in-person / live delivery, through live streaming / online webinar / videoconferencing technologies. Providers may only utilize this process during the effective period of this rule, which ends on December 31, 2020. After the expiration of this emergency rule (January 1, 2021), providers must apply, following current procedures, to continue offering an approved in-person/live course through a synchronous live streaming technology platform. In addition, each provider delivering education courses which require an end of course examination must make provision for the required end-of-course examination to be delivered through electronic methods that do not require a student's physical presence.

Rulemaking Authority: 455.2123, 475.05, 475.17, 475.182, 475.183(3), 475.451, FS. Law Implemented: 455.2123, 455.2178, 475.04, 475.17, 475.182, 475.183, 475.451, FS. History—New.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE:



**ASHLEY MOODY
ATTORNEY GENERAL
STATE OF FLORIDA**

**OFFICE OF THE ATTORNEY GENERAL
Administrative Law**

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Paralegal Specialist
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M E M O R A N D U M

TO: Ernie Reddick
Bureau of Administrative Code

FROM: *C.P.F.*
Cassandra P. Fullove, Paralegal Specialist

RE: Emergency Rule 61J2ER20-7

DATE: July 6, 2020

Enclosed please find the above-referenced emergency rule to be filed for adoption. Should you have any questions regarding the rule, please contact me at 414-3766.

Please forward the extra stamped copies of the adoption package to me in the envelope provided.

Thank you.

Attachment(s)

FILED
2020 JUL - 6 PM 12: 21
TALLAHASSEE, FLORIDA

CERTIFICATION OF
BOARD OF FLORIDA REAL ESTATE COMMISSION EMERGENCY RULE
FILED WITH THE DEPARTMENT OF STATE

I hereby certify that an immediate danger to the public health, safety or welfare requires emergency action and that the attached rule is necessitated by the immediate danger. I further certify that the procedures used in the promulgation of this emergency rule were fair under the circumstances and that the rule otherwise complies with subsection 120.54(4), Florida Statutes. The adoption of this rule was authorized by the head of the agency and this rule is hereby adopted upon its filing with the Department of State.

Rule No.

61J2ER20-7

Under the provision of subparagraph 120.54(4)(d), F.S., this rule takes effect upon filing unless a later time and date less than 20 days from filing is set out below:

Effective: _____
(Month) (Day) (Year)



Signature, Person Authorized
To Certify Rules

Executive Director for Patti E. Ketcham, Chair
Title

Number of Pages Certified

DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

2009 JUL -6 PM 12: 21

FILED

**DESIGNATION OF RULE THE VIOLATION OF WHICH IS A MINOR VIOLATION
CERTIFICATION**

Pursuant to Section 120.695(2)(c)3, Florida Statutes, I certify as agency head, as defined by section 20.05(1)(b), Florida Statutes, that:

All rules covered by this certification are not rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.

The following parts of the rules covered by this certification have been designated as rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.:

Rule No(s).

Rules covered by this certification:

Rule No(s).

61J2ER20-7



Signature of Agency Head

Executive Director for Patti E. Ketcham, Chair

Title

STATE OF FLORIDA
HALL COUNTY
2008 JUL -6 PM 12: 21

2008 JUL -6 PM 12: 21

FILED

Notice of Emergency Rule

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA REAL ESTATE COMMISSION

RULE NO.: RULE TITLE:

61J2ER20-7 Use of Live Streaming Technology for Delivery of Approved In-Person Education Courses
SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The Florida Real Estate Commission ("FREC") is statutorily mandated to require specified Prelicensure, Post-Licensure, School Instructor and Continuing Education ("CE") courses as prerequisites to initial licensure, licensure renewal, and licensure reactivation of Real Estate Sales Agents, Real Estate Brokers, and Real Estate School Instructors. Pursuant to this authority, the FREC has promulgated rules setting forth the requirements for approval of Prelicensure, Post-Licensure, Reactivation, and CE courses. The rules establish different minimum criteria for in-person vs. online or distance learning courses; and courses are submitted by providers and approved/authorized by the FREC as either in-person or online/distance. If a course is approved as in-person, it cannot be offered via online or distance learning methods, unless it is also approved as an online/distance learning course.

On March 1, 2020, Florida Governor Ron DeSantis issued Executive Order Number 20-51 which directed the State Health Officer and Surgeon General, Dr. Scott Rivkees, to declare a public health emergency pursuant to the spread of the Novel Coronavirus Disease 2019 (COVID-19). On March 9, 2020, Governor DeSantis issued Executive Order Number 20-52 (Emergency Management - COVID-19 Public Health Emergency) and officially declared that a state of emergency exists in the State of Florida. COVID-19 disease is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza. As of June 18, 2020, there are over 93,500 confirmed cases of COVID-19 disease in the State of Florida. The Center for Disease Control ("CDC") recommends mitigation measures to combat the spread of COVID-19 disease such as staying home when sick, keeping away from others who are sick, staying home when a household member is sick with respiratory disease symptoms, and for those who are at higher risk, including older adults and those who have serious chronic medical conditions, to avoid non-essential travel and to avoid crowds as much as possible. Even though mitigation measures have been successful in "slowing the spread," the risk of public infection remains high.

Since the issuance of the Executive Orders and declaration of a public health emergency by the State Health Officer and Surgeon General Dr. Rivkees, the FREC determined that live video streaming/videoconferencing technologies, such as Zoom®, GoToMeeting®, Microsoft Teams®, or WebEx®, among others, could be used as an alternative method of delivery of the course, and which would satisfy the purpose and intent of the FREC's approval of in-person courses without exposure to the dangers of being in large groups of people, necessity of travel itself, potential contribution to the spread of the virus, and most importantly, would ensure compliance with the State Health Officer's Orders, CDC Recommendations, and Governor DeSantis's Emergency Orders, including the Governor's "Safe. Smart. Step-by-Step." recovery plan.

Florida's Real Estate Professionals, and those who come in contact with them, should not be unnecessarily put at risk during this healthcare emergency. Accordingly, the FREC, by emergency rule, will waive the requirement that those educational courses previously approved by the FREC as live or in-person must in fact be presented "in-person," and authorizes any such course previously approved to be delivered by live-streaming/videoconferencing technologies, that allow the instructor or monitor to observe each student. The Board finds that this action is a measured regulatory approach that helps to mitigate the threat of exposure to COVID-19 disease to Floridians, including Real Estate professionals and those that come in contact with them, while still satisfying the purpose and intent of the waived requirements.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: Given the recently declared emergency in the State of Florida; Emergency Order 20-91; the recent guidance from the CDC; the fact that the 2018-2020 biennial renewal for licensure ended March 31, 2020 but was extended to April 30, 2020 by Emergency Order of the Secretary of the Department of Business and Professional Regulation; and that many Real Estate professionals will be required to attend in-person continuing education courses/seminars to fulfill initial licensure or renewal requirements, the FREC finds that an immediate danger to the public health, safety, or welfare necessitates immediate action regarding this issue. In addition, at the same meeting where this Emergency Rule was proposed, the Commission determined to initiate rulemaking to amend the Commission's underlying rules in Chapter

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2020 JUL -6 PM 12:22
TALLAHASSEE, FLORIDA

61J2-3, Florida Administrative Code, to allow the live-streaming of approved in-person courses through December 31, 2020; after 1 January, 2021, the existing requirements for distance course approval will resume. Notice of this meeting was published in the Florida Administrative Register in Volume 46, No.102 on May 26, 2020 and again in Volume 46, No. 112 on June 9, 2020 . In addition, notice of the FREC's meeting was posted on the FREC's official website.

SUMMARY: The proposed emergency rule authorizes Prelicensure, Post-Licensure, Reactivation, Continuing Education, and School Instructor education courses previously approved by the FREC to be delivered live and in-person to be delivered via live streaming / videoconferencing technologies for the ninety-day effective period of the emergency rule.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Robin B. Rogers, Executive Director, Florida Real Estate Commission, Zora Neale Hurston Building, North Tower, Suite N901, 400 West Robinson Street, Orlando, Florida 32801.

THE FULL TEXT OF THE EMERGENCY RULE IS:

61J2ER20-7 Use of Live Streaming Technology for Delivery of Approved In-Person Education Courses.

For the duration of this Emergency Rule, all Florida Real Estate Commission approved providers of Prelicensure, Post-Licensure, Reactivation, Continuing Education, or School Instructor educational courses may deliver any such course, previously approved by the Commission for in-person / live delivery, through live streaming / online webinar / videoconferencing technologies. Providers may only utilize this process during the effective period of this rule, ninety (90) days from the effective date. After the expiration of this emergency rule, providers must apply, following current procedures, to offer the course through distance learning methods. In addition, each provider delivering education courses which require an end of course examination must make provision for the required end-of-course examination to be delivered through electronic methods that do not require a student's physical presence.

Rulemaking Authority: 455.2123, 475.05, 475.17, 475.182, 475.183(3), 475.451, FS. Law Implemented: 455.2123, 455.2178, 475.04, 475.17, 475.182, 475.183, 475.451, FS. History—New.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: July 8, 2020

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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA