

2021 Value Adjustment Board Training

Module 1: Introduction and Overview

Training Module 1 addresses the following topics:

- Description of This Training Under Florida Law
- Scope and Intended Use of This Training
- Numbers and Titles of Modules in This Training
- Definitions and Abbreviations Used in This Training
- Intended Audience for This Training
- Persons Required to Take This Training But Not Complete the Exam
- Persons Required to Complete This Training and Complete the Exam
- The Florida Property Assessment Appeal System
- Taxpayer Rights
- The Four Sources of Florida Law
- **(NEW)** [2021 Changes to Statutory Law](#)
- 2020 Changes to Statutory Law
- 2019 Changes to Statutory Law
- 2018 Changes to Statutory Law
- 2017 Changes to Statutory Law
- Statutory Law Effective Beginning With 2009 Assessments
- Administrative Rules and Forms
- Uniform Policies and Procedures Manual and Accompanying Documents
- The Value Adjustment Board and Government-in-the-Sunshine
- Complete Text of Specific Legal Provisions for Taxpayer Rights
- Taxpayer Rights in Section 192.0105, F.S.
- Taxpayer Rights in Rule 12D-9.001, F.A.C.
- Links to Resources on the Internet

Learning Objectives

After completing this training module, the learner should be able to:

- Identify the requirements and components of this training
- Recognize the scope and intended use of this training
- Apply the requirements for completing the training and the exam
- Recognize the components of the Florida Property Assessment Appeal System
- Identify and apply the provisions for taxpayer rights
- Recognize the four sources of Florida law
- Identify the changes enacted in the new statutory law
- Recognize the components of the new rules and forms

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- 1 • Identify the components of the Uniform Policies and Procedures Manual and
- 2 Accompanying Documents
- 3 • Recognize the requirements for Government-in-the-Sunshine in proceedings of the
- 4 value adjustment board
- 5 • Identify internet resources for administrative reviews
- 6
- 7

8 **Description of This Training Under Florida Law**

9 Florida law requires the Florida Department of Revenue (Department) to provide this
10 annual training for value adjustment boards (Boards) and special magistrates.

11
12 The Department's training is the official training for the Board and special magistrates
13 regarding administrative reviews. See Rule 12D-9.012(5), Florida Administrative Code.

14
15 The Department's training for Boards and special magistrates is open to the public. See
16 Rule 12D-9.012(2), Florida Administrative Code.

17
18 To assure compliance with Florida law, this training content should only be used in
19 conjunction with: the Uniform Policies and Procedures Manual, a compilation of law
20 titled Other Legal Resources Including Statutory Criteria, and legal advice from the
21 Board attorney.

22
23 * These training materials are not rules and do not have the force or effect of law.
24 These training materials should not be used as a substitute for the actual sources of
25 applicable law.

26
27 * For more information on the content and use of this training, see the following
28 section titled "Scope and Intended Use of this Training."

29
30 Rule 12D-9.012(1), Florida Administrative Code, provides that the Department's training
31 for Boards and special magistrates shall address the following topics:

- 32
- 33 1. The law that applies to the administrative review of assessments;
- 34
- 35 2. Taxpayer rights in the administrative review process;
- 36
- 37 3. The composition and operation of the value adjustment board;
- 38
- 39 4. The roles of the Board, Board clerk, Board legal counsel, special magistrates, and
- 40 the property appraiser or tax collector and their staff;
- 41
- 42 5. Procedures for conducting hearings;
- 43
- 44 6. Administrative reviews of just valuations, classified use valuations, property
- 45 classifications, exemptions, and portability assessment differences;
- 46

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- 1 7. The review, admissibility, and consideration of evidence;
2
3 8. Requirements for written decisions; and
4
5 9. The Department's standard measures of value, including the guidelines for real and
6 tangible personal property.
7
8

9 **Scope and Intended Use of This Training**

10 In 2008, legislation was enacted requiring the Department to provide training for value
11 adjustment boards and special magistrates (VAB training). See Chapter 2008-197, LOF
12 (HB 909), creating section 194.035(3), F.S.
13

14 In some cases, the Department of Revenue will supplement its training for value
15 adjustment boards and special magistrates by providing informational bulletins
16 regarding administrative reviews of assessments.
17

18 The training and bulletins are not rules and do not have the force or effect of law as do
19 provisions of the constitution, statutes, and duly adopted administrative rules.
20

21 * The training materials and bulletins are aid and assistance as described in section
22 195.002(1), F.S.
23

24 * Board attorneys should not consider the training materials or bulletins as controlling
25 when providing legal advice, but may consider them as persuasive.
26

27 * Boards and special magistrates should not consider the training materials or
28 bulletins as controlling for findings of fact, conclusions of law, or reasons for
29 upholding or overturning determinations of the property appraiser or tax collector,
30 but may consider the training materials and bulletins as persuasive.
31

32 * The training materials and bulletins are separate and distinct from the Uniform
33 Policies and Procedures Manual required by section 194.011(5)(b), F.S., the
34 contents of which manual do have the force and effect of law.
35

36 * To avoid confusion between the training materials required by section 194.035(3),
37 F.S., and the Uniform Policies and Procedures Manual required by section
38 194.011(5)(b), F.S., these training materials should not be referred to as a "manual."
39

40 The training contains information about the law of which Boards, Board attorneys, and
41 special magistrates should be aware.
42

43 * The training also contains the Department's observations, explanations, examples,
44 and recommendations intended to assist Boards, Board attorneys, and special
45 magistrates in performing their duties consistent with law.
46

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1 * The Department's explanations and recommendations may include legal opinions.

2

3 * It is understood that the Legislature expects Boards and special magistrates to
4 comply with law and the Department's Board training to reasonably inform Boards
5 and special magistrates of the actions the Department believes are necessary for
6 compliance with law.

7

8 These training materials are not the "sole guide" for Boards and special magistrates in
9 conducting administrative reviews of assessments.

10

11 * The training materials provide information to Boards and special magistrates about
12 key provisions of law and provide limited illustrations or examples of how that
13 information could be applied in some circumstances.

14

15 * The many variations in circumstances that a Board or special magistrate would
16 encounter in the performance of their duties cannot be identified in advance and
17 then addressed in these training materials.

18

19 In conducting their administrative reviews, Boards and special magistrates would be
20 expected to use sources of information other than these training materials, depending
21 upon the facts and issues in each situation. These other sources include:

22

23 (a) Legal advice from the Board attorney;

24

25 (b) Information in the Department's Uniform Policies and Procedures Manual and
26 Accompanying Documents;

27

28 (c) Information referenced in the training materials, including information available at
29 internet links placed in the training materials; and

30

31 (d) Information in professional texts that pertains to professionally accepted appraisal
32 practices not inconsistent with Florida law.

33

34 Boards, Board attorneys, and special magistrates are responsible, on a case-by-case
35 basis, for: determining relevant sources of information, determining relevant facts,
36 determining applicable law, and reaching findings of fact and conclusions of law.

37

38 In the context of the Department's responsibility to provide training to assist Boards,
39 Board attorneys, and special magistrates in the performance of their duties, training
40 terms such as "should" and "should not" represent the Department's recommendations
41 for things it believes should be done or should be avoided to comply with law.

42

43 * Similarly, terms such as "must" and "must not" represent the Department's
44 recommendations for things it believes must be done or must be avoided to comply
45 with law.

46

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1 The law does not authorize the Department of Revenue to base enforcement or other
2 agency action on the training or bulletins.

3
4 * The law does not provide any penalty for a case where a value adjustment board or
5 special magistrate does not comply with the training or bulletins.

6
7 However, because the training is required by law and contains much information about
8 the law, conscientious review of these training materials will benefit Boards, Board
9 attorneys, and special magistrates and will help to promote a high level of public trust in
10 the value adjustment board process.

11
12 If a Board or special magistrate believes that an area of the training information is
13 incorrect, the Board or special magistrate should seek a legal opinion from the Board
14 attorney before proceeding further.

15
16 If a Board attorney believes that an area of the training information is incorrect, the
17 Department requests that the Board attorney provide to the Department his or her legal
18 opinion that supports the belief, along with recommended revisions for those portions of
19 the training materials that the Board attorney believes are incorrect.

20
21 Board attorneys have a duty to advise the Board on all aspects of the value adjustment
22 board process to ensure that all actions taken by the Board and its appointees meet the
23 requirements of law. See Rule 12D-9.009(1)(a), F.A.C.

24
25 * Board legal counsel shall advise the Board, Board clerk, and special magistrates in a
26 manner that will promote and maintain a high level of public trust and confidence in
27 the administrative review process. See Rule 12D-9.009(1)(b), F.A.C.

28
29 * Board legal counsel must advise the Board, Board clerk, and special magistrates in
30 a manner that ensures the protection of the property taxpayer rights provided in
31 section 192.0105, F.S., and Rule 12D-9.001, F.A.C.

32
33 If a special magistrate receives different legal advice on the same subject from Board
34 attorneys in different counties, the special magistrate should disclose this fact to the
35 Board attorney in each county.

36
37 * The Department requests that Board attorneys receiving such a disclosure advise
38 the Department in cases where the difference in advice is not resolved.

39 40 41 **Numbers and Titles of Modules in This Training**

42 The Department's 2018 training for Boards and special magistrates is organized into 11
43 training modules, as listed and described below:
44

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- 1 Module 1, titled: Introduction and Overview;
2
3 Module 2, titled: The Roles of Participants in the Value Adjustment Board Process;
4
5 Module 3, titled: Procedures Before the Hearing;
6
7 Module 4, titled: Procedures During the Hearing;
8
9 Module 5, titled: Procedures After the Hearing;
10
11 Module 6, titled: Administrative Reviews of Real Property Just Valuations;
12
13 Module 7, titled: Administrative Reviews of Classified Use Valuations and Assessed
14 Valuations;
15
16 Module 8, titled: Administrative Reviews of Tangible Personal Property Just Valuations;
17
18 Module 9, titled: Administrative Reviews of Denials of Exemptions and Property
19 Classifications;
20
21 Module 10, titled: Administrative Reviews of Assessment Difference Transfers and Tax
22 Deferrals; and
23
24 Module 11, titled: Requirements for Written Decisions.
25
26

Definitions and Abbreviations Used in This Training

27 The following definitions are based on those in Rule 12D-9.003, F.A.C.

28
29
30 “Agent” means any person who is authorized by the taxpayer to file a petition with the
31 board and represent the taxpayer in board proceedings on the petition. The term “agent”
32 means the same as the term “representative.”
33

34 “Board” means the county value adjustment board (these terms may be used
35 interchangeably throughout this training).
36

37 “Board clerk” or “Clerk” means the clerk of the county value adjustment board.
38

39 “Department,” unless otherwise designated, means the Department of Revenue.
40

41 “Hearing” means any hearing relating to a petition before a value adjustment board or
42 special magistrate, regardless of whether the parties are physically present or
43 telephonic or other electronic media is used to conduct the hearing, but shall not include
44 a proceeding to act upon, consider or adopt special magistrates’ recommended
45 decisions at which no testimony or comment is taken or heard from a party.
46

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1 “Petition” means a written request for a hearing, filed with a board by a taxpayer or an
2 authorized person. A petition is subject to format and content requirements, as provided
3 in Rule 12D-9.015, F.A.C. The filing of a petition is subject to timing requirements, as
4 provided in Rule Chapter 12D-9, F.A.C.

5
6 “Petitioner” means the taxpayer or the person authorized by the taxpayer to file a
7 petition on the taxpayer’s behalf and represent the taxpayer in board proceedings on
8 the petition.

9
10 “Representative” means any person who is authorized by the taxpayer to file a petition
11 with the board and represent the taxpayer in board proceedings on the petition. The
12 term “representative” means the same as the term “agent.”

13
14 “Taxpayer” means the person or other legal entity in whose name property is assessed,
15 including an agent of a timeshare period titleholder, and includes exempt owners of
16 property, for purposes of this chapter.

17
18 Other definitions include those listed following and those presented in later modules of
19 this training.

20
21 “Evidence” generally means something (including testimony, documents, or tangible
22 objects) that tends to prove or disprove the existence of a disputed fact. *See Black’s Law*
23 *Dictionary, Eighth Edition, page 595.*

24
25 “Taxpayer” and “petitioner” have the same meaning and may be used interchangeably
26 throughout this training.

27
28 “Parties” means the petitioner and either the property appraiser or the tax collector, as
29 applicable.

30
31 “Party” means the petitioner, the property appraiser, or the tax collector, depending on
32 the context.

33
34 “Florida Statutes” is abbreviated as “F.S.” and “Florida Administrative Code” is
35 abbreviated as “F.A.C.”

36 37 38 **Intended Audience for This Training**

39 Under Subsections 194.035(1) and (3), F.S., the intended audience for this training is:

- 40
41 1. All special magistrates in counties that use special magistrates; and
42
43 2. In counties that do not use special magistrates, the members of the Board or the
44 Board attorney.
45

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1 Note: All special magistrates are required to take this training, but not all are required to
2 complete the training examination.

3
4 * Real property appraiser special magistrates must take Modules 1, 2, 3, 4, 5, 6, 7,
5 and 11.

6
7 * Tangible personal property appraiser special magistrates must take Modules 1, 2, 3,
8 4, 5, 7 (Part 1 only), 8, and 11.

9
10 * Attorney special magistrates must take Modules 1, 2, 3, 4, 5, 9, 10, and 11.

11
12 * The Department recommends that all Board attorneys annually complete all
13 modules of this training and complete the training examination.

14 15 16 **Persons Required to Take This Training But Not Complete the Exam**

17 Described below are the persons who are required to take this training each year before
18 any hearings are conducted, but who are not required to complete the training
19 examination.

- 20
21 1. In those counties with a population of 75,000 or less where the Board does not use
22 special magistrates, either all Board members or the Board attorney must take all
23 training modules before conducting any hearings, including any updated training
24 modules.
25
26 2. Each special magistrate with five years of experience, and who is otherwise
27 qualified, must take the required training modules before conducting any hearings
28 and must complete any applicable updated training modules.

29
30 All persons required to take the training but not complete the training exam must
31 provide a signed statement to the Board clerk acknowledging that they have taken the
32 required training modules.

33
34 The acknowledgment statement can be found on the Department's training website.

35 36 37 **Persons Required to Complete This Training and Complete the Exam**

38 Before being appointed, each special magistrate with at least three years but less than
39 five years of relevant experience and who is otherwise qualified and wants to substitute
40 the training for two years of the required experience must complete the required training
41 modules and the required examination and also must complete any applicable updated
42 training modules and examinations.

43
44 Before being appointed, the special magistrates required to complete the exam must
45 receive from the Department a certificate of completion.

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1 The certificate of completion must be signed by the special magistrate acknowledging
2 that he or she has completed the required training modules and the required
3 examination.

4
5 Each of these special magistrates must provide to the Board clerk a copy of the
6 certificate of completion of the training and examinations, including any applicable
7 updated training modules.

8 9 10 **The Florida Property Assessment Appeal System**

11 Florida law provides taxpayers with four opportunities to appeal property assessment
12 determinations made by public officials.

13
14 * None of these four opportunities is a prerequisite for any of the others.

15
16 * Each of these opportunities is summarized below.

17 18 1. Feedback to Taxing Authorities

19 Taxpayers have the right to attend and give opinions at the public hearings where
20 local taxing authorities consider the amount of the proposed property tax and millage
21 (tax) rates.

22
23 * These taxing authorities include cities, counties, school districts, and special
24 districts.

25
26 * At these public hearings: *“The general public shall be allowed to speak and to*
27 *ask questions prior to adoption of any measures by the governing body.”* See
28 section 200.065(2)(c), (d), and (e), F.S.

29
30 The notices of proposed property taxes (commonly referred to as the Truth in
31 Millage or TRIM notices) are sent by first-class mail to property taxpayers of record
32 in mid-to-late August each year.

33
34 * This notice provides information on property value and proposed taxes, along
35 with information on the public hearings to be held by taxing authorities that levy
36 property taxes. See section 200.069, F.S.

37 38 2. Informal Conference with the Property Appraiser

39 Taxpayers may contact or visit the property appraiser’s office for an informal
40 conference to express disagreement with the property appraiser’s determinations.
41 See section 194.011(2), F.S., and see Rule 12D-9.002, F.A.C.

42
43 * At this conference, taxpayers may present facts that support their claim for a
44 change in the assessment, and property appraisers should present the facts that
45 support their assessment.

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1 * However, there is no requirement to have an informal conference before a
2 taxpayer files a petition with the Board or files a lawsuit in circuit court.
3

4 3. Petition to the Value Adjustment Board

5 Taxpayers may file petitions with the Board to appeal a property appraiser's
6 determinations on value, tax exemptions, property classifications, and portability
7 assessment difference transfers.
8

9 Taxpayers may also file petitions with the Board to appeal a tax collector's
10 determinations on tax deferrals and associated penalties. See section 194.011, F.S.
11

12 4. Lawsuit in Circuit Court

13 Taxpayers may file lawsuits in local circuit court to challenge assessments. See
14 section 194.171, F.S.
15

16 * A taxpayer is not required to file a petition with the Board before filing a lawsuit.
17
18

19 **Taxpayer Rights**

20 Florida law provides certain rights for property taxpayers in section 192.0105, F.S., and
21 in Rule 12D-9.001, F.A.C. The complete text of each of these taxpayer rights laws is
22 presented later in a separate section of this module.
23

24 Boards, Board clerks, Board attorneys, property appraisers, and special magistrates
25 must comply with these provisions of law to ensure that taxpayer rights are protected in
26 the value adjustment board process.
27

28 The Taxpayer Bill of Rights is in section 192.0105, F.S. This bill of rights is a
29 compilation of legal requirements from other chapters of the Florida Statutes.
30

31 The four primary categories of Taxpayer Rights in section 192.0105, F.S., are:
32

- 33 1. The Right to Know – includes the right to receive notices and be informed about
34 various aspects of the property tax.
35
- 36 2. The Right to Due Process – includes the right to an informal conference with the
37 property appraiser, file value adjustment board petitions, receive notices of results
38 from the value adjustment board, and file lawsuits.
39
- 40 3. The Right to Redress – includes the right to discounts, refunds for overpayment of
41 taxes, and redemption of tax certificates sold for delinquent taxes on real property.
42
- 43 4. The Right to Confidentiality – includes the right for certain taxpayer records to be
44 confidential consistent with the provisions of law.
45
46

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1 **The Four Sources of Florida Law**

2 Florida law governs the value adjustment board process and provides for taxpayer
3 rights. Provisions of Florida law are presented and cited throughout this training.

4
5 The four sources of Florida law are the Florida Constitution, Florida Statutes, Florida
6 Administrative Code, and case law (certain court decisions), each of which is listed and
7 briefly described below.

- 8
9 1. Florida Constitution: This comes from the people. Sections 3 and 4 of Article VII of
10 the Florida Constitution provide for property valuations, tax exemptions, and property
11 classifications.

12
13 Constitutional amendments are required to provide ad valorem tax exemptions and
14 to assess property at less than just value.

- 15
16 2. Florida Statutes, abbreviated as "F.S.": Florida Statutes come from the Legislature
17 and are a collection of state laws listed by subject area.

18
19 Section 192.0105, F.S., contains property taxpayer rights.

20
21 Chapter 194, Parts 1 and 3, F.S., govern the value adjustment board process.

22
23 Florida's Sunshine Law is in Chapter 286, F.S.

- 24
25 3. Florida Administrative Code, abbreviated as "F.A.C.": This code is composed of
26 administrative rules produced by state agencies with public input from interested
27 parties.

28
29 Rule Chapter 12D-9, F.A.C., contains property taxpayer rights and also contains
30 procedural rules that must be followed by Boards, special magistrates, Board
31 attorneys, Board clerks, property appraisers, tax collectors, and petitioners. Other
32 Board rules are in Rule Chapters 12D-10 and 12D-16, F.A.C.

- 33
34 4. Case Law: These court decisions come from the judicial opinions of the Florida
35 Supreme Court, the Florida District Courts of Appeal, and Federal Courts.

36
37 Note: Statutes enacted in 2009 preempt any prior case law that is inconsistent with
38 the statutes. See sections 194.301(1) and 194.3015, F.S.

39
40 Information from Florida court decisions is presented in this training. Most of these
41 court decisions predate the statutory law enacted in 2009. The 2009 law preempts
42 these decisions to the extent the decisions are inconsistent with it.

43
44 Thus, the information from these court decisions, as presented in this training, has
45 been modified where appropriate for consistency with the 2009 statutory changes.

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(NEW) 2021 Changes to Statutory Law

In 2021, changes to statutory law were enacted. These changes will affect administrative reviews of assessments beginning in 2021, and in some cases 2022. These new laws are summarized below and are addressed where necessary in various modules of this training. Please refer to the chapter law and statutes to read the legislative changes in context with the surrounding statutory language. The chapter laws are available at: <http://laws.flrules.org/>

Legislation enacted in 2021:

- Amended section 196.075(4)(d), and (5) F.S., which provides an additional homestead exemption for persons 65 and older. The amendment to section 196.075(4)(d), F.S., requires an ordinance enacted by a local government authorizing an additional homestead exemption for low-income seniors must require the taxpayer to submit a sworn statement of household income when claiming the exemption for the first time. The amendment to section 196.075(5), F.S., provides that the property appraiser notifies each taxpayer of the adjusted income limitation each year. The taxpayer must respond by May 1 if their income exceeds the limitation. The property appraiser may conduct random audits of the taxpayers' sworn statements. See Chapter 2021-208, Section 1, Laws of Florida, (HB 597), effective July 1, 2021.
- Amended section 194.011(3), F.S., to clarify that a condominium association, as defined in s. 718.103, a cooperative association as defined in s. 719.103, or any homeowners' association as defined in s. 723.075, with approval of its board of administration or directors, may file with the value adjustment board a single joint petition on behalf of any association members who own units or parcels of property which the property appraiser determines are substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition. Requires an association to notify its members of its intention to petition the value adjustment board and include in the notice a statement that, by not opting out of the petition, the unit or parcel owner agrees that the association shall also represent the unit or parcel owner in any related proceedings. Amendments created provisions for the association to continue to represent owners in subsequent circuit court proceedings. See Chapter 2021-209, Section 1, Laws of Florida, (HB 649), effective July 1, 2021.
- Repealed section 193.019, F.S., relating to the exemption for hospitals and community benefit reporting. See Chapter 2021-31, Section 1, Laws of Florida, (HB 7061), effective May 21, 2021.
- Amended section 193.155(3)(a), F.S., to exclude additional transfers from being considered changes in ownership. Created section 193.155(3)(a)1.d., F.S., to exclude a change or transfer via an instrument in which the owner entitled to the homestead exemption is listed as both grantor and grantee of the real property

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1 and one or more other individuals, all of whom held title as joint tenants with
2 rights or survivorship with the owner are named only as grantors and removed
3 from the title. Created section 193.155(3)(a)5., F.S., to exclude a transfer of
4 property involving multiple owners holding title as joint tenants with rights of
5 survivorship in which one or more owners were entitled to and received
6 homestead exemption on the property; one or more owners dies; and
7 subsequent to the transfer, the surviving owner(s) previously entitled to and
8 receiving homestead exemption continue to be entitled to and receive the
9 homestead exemption. See Chapter 2021-31, Section 2, Laws of Florida, (HB 7061),
10 effective July 1, 2021.

- 11
12 • Amended section 193.155(4)(b), F.S., to provide that changes, additions, or
13 improvements that replace all or a portion of homestead property, including
14 ancillary improvements, damaged or destroyed by misfortune or calamity shall be
15 assessed upon substantial completion subject to the assessment increase
16 limitation using the homestead property's assessed value as of the January 1
17 immediately before the date on which the damage or destruction was sustained,
18 when: (a. the square footage of the homestead property as changed or improved
19 does not exceed 110 percent of the square footage of the homestead property
20 before the damage or destruction; or (b. the total square footage of the
21 homestead property as changed or improved does not exceed 1,500 square feet.
22 See Chapter 2021-31, Sections 2 and 7, Laws of Florida, (HB 7061), effective July 1,
23 2021 and applicable retroactively to assessments made on or after January 1, 2021.
24
- 25 • Amended section 193.1554(6)(b), F.S. to provide that changes, additions, or
26 improvements that replace all or a portion of nonhomestead residential property,
27 including ancillary improvements, damaged or destroyed by misfortune or
28 calamity shall be assessed upon substantial completion subject to the
29 assessment increase limitation using the nonhomestead property's assessed
30 value as of the January 1 prior to the date on which the damage or destruction
31 was sustained, when (a. the square footage of the property as changed or
32 improved does not exceed 110 percent of the square footage of the property
33 before the damage or destruction, or (b. the total square footage of the property
34 as changed or improved does not exceed 1,500 square feet. See Chapter 2021-31,
35 Sections 4 and 7, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable
36 retroactively to assessments made on or after January 1, 2021.
37
- 38 • Amended section 193.1555(6)(b), F.S. to provide that changes, additions, or
39 improvements that replace all or a portion of real property, including ancillary
40 improvements, damaged or destroyed by misfortune or calamity shall be
41 assessed upon substantial completion subject to the assessment increase
42 limitation using the nonresidential real property's assessed value as of the
43 January 1 prior to the date on which the damage or destruction was sustained,
44 when (a. the square footage of the property as changed or improved does not
45 exceed 110 percent of the square footage of the property before the damage or
46 destruction, or (b. the total square footage of the property as changed or

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1 improved does not exceed 1,500 square feet. See Chapter 2021-31, Sections 6 and
2 7, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable retroactively to
3 assessments made on or after January 1, 2021.
4

- 5 • Amended section 196.196(2), F.S., to provide that portions of a property that are
6 not predominantly used for charitable, religious, scientific, or literary purposes are
7 not exempt from taxation, and that an exemption for the portions of property used
8 for charitable, religious, scientific, or literary purposes is not affected so long as
9 the predominant use of such property is for charitable, religious, scientific, or
10 literary purposes. The amendment applies to taxable years beginning on or after
11 January 1, 2022, and does not provide a basis for an assessment of any tax not
12 paid or create a right to a refund or credit of any tax paid before July 1, 2021. See
13 Chapter 2021-31, Sections 8 and 9, Laws of Florida, (HB 7061), effective July 1, 2021
14 and applicable beginning January 1, 2022.
15
- 16 • Amended section 196.1978(2), F.S., affordable housing property exemption,
17 removing the ad valorem tax discount of 50 percent and enacting an exemption
18 of 100 percent on multifamily projects that provide housing to extremely-low-
19 income, very-low-income, or low-income families. Such a multifamily project will
20 receive the exemption beginning on January 1 of the year following the 15th year
21 of such an agreement. See Chapter 2021-31, Section 10, Laws of Florida, (HB 7061),
22 effective July 1, 2021.
23
- 24 • Amended section 196.198, F.S., educational property exemption, to provide that
25 land, buildings, and other improvements used exclusively for educational
26 purposes shall be deemed owned by an educational institution if the educational
27 institution that currently uses the land, buildings, and other improvements for
28 educational purposes is an educational institution described under s. 212.0602,
29 F.S, and, under a lease, the educational institution is responsible for any taxes
30 owed and for ongoing maintenance and operational expenses for the land,
31 buildings, and other improvements. The owner of the property must disclose to
32 the educational institution the full amount of the benefit derived from the
33 exemption and the method for ensuring the educational institution receives the
34 benefit so that the educational institution receives the full benefit of the
35 exemption. Also, property owned by a house of public worship and used by an
36 educational institution for educational purposes limited to students in preschool
37 through grade 8 is exempt. The amendment relating to property owned by a
38 house of public worship is remedial and clarifying in nature and applies to actions
39 pending as of July 1, 2021. See Chapter 2021-31, Sections 11 and 12, Laws of Florida,
40 (HB 7061), effective July 1, 2021.
41
42

2020 Changes to Statutory Law

43 In 2020, changes to statutory law were enacted. These changes will affect
44 administrative reviews of assessments beginning in 2020, and in some cases 2019.
45 These new laws are summarized below and are addressed where necessary in various
46

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1 modules of this training. Please refer to the chapter law and statutes to read the
2 legislative changes in context with the surrounding statutory language. The chapter laws
3 are available at: <http://laws.flrules.org/>

4
5 Legislation enacted in 2020:
6

- 7 • Amended section 196.173(2), F.S., which provides an exemption for deployed
8 servicemembers. The law change extended the application deadline to June 1,
9 2020 and removed Operation Enduring Freedom, which began October 7, 2001,
10 and ended December 31, 2014. The amendment added Operation Juniper
11 Shield, which began in February 2007; Operation Pacific Eagle, which began in
12 September 2017, and Operation Martillo, which began in January 2012. See
13 Chapter 2020-10, Sections 7, 8 and 9, Laws of Florida, (HB 7097), effective upon
14 becoming a law on April 8, 2020, and first applicable to the 2020 ad valorem tax roll.
15
- 16 • Provided that a value adjustment board petition filing fee is not required for
17 petitions of the deployed servicemembers exemption, and provided additional
18 deadlines and procedures for approval of late filed applications for the
19 exemption. Provided that the property appraiser may grant the deployed
20 servicemember exemption if a qualifying applicant files an application for the
21 exemption on or before the 25th day after the property appraiser mails the notice
22 required under section 194.011(1), F.S. If the property appraiser denies the
23 application so filed, the applicant may file a petition with the value adjustment
24 board on or before the 25th day after the property appraiser mails the notice
25 required under section 194.011(1), F.S. The petitioner is not required to pay a
26 filing fee for such petition, notwithstanding section 194.013, F.S. The value
27 adjustment board may grant the exemption if the applicant is qualified and
28 demonstrates extenuating circumstances, as determined by the board, which
29 warrant granting the exemption. See Chapter 2020-10, Section 9, Laws of Florida,
30 (HB 7097), effective upon becoming a law on April 8, 2020, and first applicable to the
31 2020 ad valorem tax roll.
32
- 33 • Amended section 194.035, F.S. to provide an appraisal performed by a special
34 magistrate is not permitted as evidence in a hearing before a value adjustment
35 board for which the special magistrate serves. An appraisal may not be submitted as
36 evidence to a value adjustment board in any year that the person who performed the
37 appraisal serves as a special magistrate to that value adjustment board. See Chapter
38 2020-10, Section 4, Laws of Florida, effective July 1, 2020.
39
- 40 • Created section 193.1557, F.S., relating to assessment of certain property damaged
41 or destroyed by Hurricane Michael in 2018, and providing that sections
42 193.155(4)(b), 193.1554(6)(b), or 193.1555(6)(b), F.S., relating to assessment of
43 changes, additions or improvements, apply to such changes, additions, or
44 improvements begun within five years after January 1, 2019. The new section
45 193.1557, F.S., applies to 2019 through 2023 tax years and stands repealed on

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1 December 31, 2023. See Chapter 2020-10, Section 3, Laws of Florida, effective July 1,
2 2020.

- 3
- 4 • Enacted two amendments to section 196.1978(1), F.S. in Chapter 2020-10, section
5 10, Laws of Florida, effective upon becoming a law April 8, 2020 and operating
6 retroactive to January 1, 2020; and Chapter 2020-10, Section 11, Laws of Florida,
7 effective January 1, 2021.
8
 - 9 • Section 10 amended section 196.1978(1), F.S., to provide, for property used to
10 provide affordable housing, additional criteria under which vacant units are
11 treated as exempt portions of the affordable housing property. These criteria are:
12 if a recorded land use restriction agreement requires all residential units within
13 the property to be used in a manner that qualifies for the exemption under this
14 subsection and if the vacant units are being offered for rent. effective upon
15 becoming a law and will operate retroactively to January 1, 2020. See Chapter
16 2020-10, Section 10, Laws of Florida (CS/HB 7097).
17
 - 18 • Section 11 amended section 196.1978(1), F.S., to provide legislative intent for
19 property used to provide affordable housing, that if the sole member of a limited
20 liability company that owns the property is also a limited liability company that is
21 disregarded as an entity for federal income tax purposes the property will be
22 treated as owned by the sole member of the limited liability company that owns
23 the limited liability company that owns the property. Also, units whose occupants'
24 income no longer meet the income limits, but whose income met the income
25 limits at the time they became tenants, shall be treated as exempt portions of the
26 affordable housing property. This amendment is effective January 1, 2021. See
27 Chapter 2020-10, Section 11, Laws of Florida (CS/HB 7097).
28
 - 29 • Created section 193.019, F.S., effective January 1, 2022, relating to the exemption
30 for hospitals, and providing for community benefit reporting. By January 15 of each
31 year, each applicant for exemption for hospital property shall submit to the
32 Department a copy of the applicant's most recently filed IRS Form 990, Schedule H,
33 with a statement certifying the county net community benefit expense is true and
34 correct, and a schedule displaying information regarding the community benefit
35 expense. By January 15 of each year, each county property appraiser shall calculate
36 and submit to the Department the tax reduction resulting from the property
37 exemption for the prior year granted pursuant to ss. 196.196 and 196.197 for each
38 property owned by an applicant. The Department must determine if the county net
39 community benefit expense attributed to an applicant's property in a county equals
40 or exceeds the tax reduction resulting from the applicant's exemption for that county.
41 If an applicant's county net community benefit expense does not equal or exceed the
42 tax reduction from the exemption, in two consecutive years, the Department shall
43 notify the property appraiser by March 15 to limit the exemption for the current year
44 by multiplying it by the ratio of the net community benefit expense to the tax
45 reduction resulting from the exemption. See Chapter 2020-10, Section 2, Laws of Florida
46 (CS/HB 7097) effective January 1, 2022.

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1

- 2 • Created section 196.081(1)(b), F.S. to provide that a veteran or veteran's surviving
3 spouse may receive a prorated refund of property taxes paid on property on which
4 legal or beneficial title is acquired between January 1 and November 1. The
5 additional requirements for the refund are that the veteran or veteran's surviving
6 spouse:
7 • receives an exemption under section 196.081, F.S., on a property for the tax
8 year, and
9 • applies for and receives an exemption on the acquired property in the next tax
10 year under section 196.081, F.S.

11 The refund is prorated as of the date of transfer. If the property appraiser determines
12 the veteran or spouse is entitled to an exemption under section 196.081, F.S., on the
13 newly acquired property, the law provides for the property appraiser to make entries
14 on the tax roll necessary to allow the prorated refund of taxes for the previous tax
15 year. See Chapter 2020-140, Laws of Florida (CS/CS/HB 1249), effective July 1, 2020.
16
17

18 **2019 Changes to Statutory Law**

19 In 2019, a change to statutory law was enacted. This change affected administrative
20 reviews of assessments beginning in 2019. This change is summarized below and is
21 addressed where necessary in various modules of this training. Please refer to the
22 chapter law and statutes to read the legislative changes in context with the surrounding
23 statutory language. The chapter laws are available at: <http://laws.flrules.org/>
24

25 Legislation enacted in 2019:

- 26
- 27 • Created section 193.4517, Florida Statutes, to provide that for the 2019 tax roll,
28 tangible personal property owned and operated by a farm, farm operation, or
29 agriculture processing facility located in Okaloosa, Walton, Holmes, Washington,
30 Bay, Jackson, Calhoun, Gulf, Gadsden, Liberty, Franklin, Leon, or Wakulla County is
31 deemed to have a market value no greater than its value for salvage if the tangible
32 personal property was unable to be used for at least 60 days due to the effects of
33 Hurricane Michael. "Unable to be used" means the tangible personal property was
34 damaged, or the farm, farm operation, or agricultural processing facility was affected
35 to such a degree that the tangible personal property could not be used for its
36 intended purpose. "Farm" has the same meaning as provided in s. 823.14(3)(a), F.S.
37 and "farm operation" has the same meaning as provided in s. 823.14(3)(b), F.S. The
38 deadline for an applicant to file an application with the property appraiser for
39 assessment under this new law is August 1, 2019. If the property appraiser denies
40 an application, the applicant may file, under s. 194.011(3), a petition with the value
41 adjustment board requesting that the tangible personal property be assessed
42 according to this law. Such petition must be filed on or before the 25th day after the
43 mailing by the property appraiser, during the 2019 calendar year, of the notice
44 required under s. 194.011(1). This legislation is effective July 1, 2019 and applies
45 retroactively to January 1, 2019. See Chapter 2019-42, Section 2, Laws of Florida (HB
46 7123).

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2018 Changes to Statutory Law

In 2018, several changes to statutory law were enacted. Except where other dates are noted, these changes will affect administrative reviews of assessments beginning in 2019. These new laws are summarized below and are addressed where necessary in various modules of this training. Please refer to the chapter law and statutes to read the legislative changes in context with the surrounding statutory language. The chapter laws are available at: <http://laws.flrules.org/>

Legislation enacted in 2018:

- Created section 197.318, F.S., to provide an abatement of taxes, by a refund, for homestead residential improvements made uninhabitable from damage or destruction by Hurricane Hermine, Matthew or Irma. The legislation provides that a property owner waives a claim for abatement unless the property owner files a sworn application with the property appraiser by March 1, 2019. This statute provides detailed definitions and specific procedures for evaluating and processing an abatement. These amendments are effective March 23, 2018. See Chapter 2018-118, Sections 17 and 63, Laws of Florida (CS/HB 7087).
- Amended section 194.032, F.S., to provide for value adjustment boards to hear appeals pertaining to the denial by the property appraiser of tax abatements. This amendment is effective July 1, 2018. See Chapter 2018-118, Sections 14 and 63, Laws of Florida (CS/HB 7087).
- Created section 193.0237, F.S., to provide the method for assessment of multiple parcel buildings. The value of land upon which a multiple parcel building is located, regardless of ownership, may not be separately assessed and must be allocated among and included in the just value of all the parcels in the multiple parcel building. This amendment applies to assessments beginning with the 2018 tax roll. See Chapter 2018-118, Section 8, Laws of Florida (CS/HB 7087).
- Created section 193.4516, F.S., to provide that tangible personal property owned and operated by a citrus fruit packing or processing facility is deemed to have a market value no greater than its value for salvage, if such property is no longer used in the operation of the facility due to Hurricane Irma (2017) or due to citrus greening. This amendment applies to the 2018 tax roll. See Chapter 2018-118, Sections 10 and 11, Laws of Florida (CS/HB 7087).
- Amended section 193.461(6)(c), F.S., to provide that screened enclosed structures used in horticultural production for protection from pests and diseases or to comply with state or federal eradication or compliance agreements are a part of the average yields per acre and have no separately assessable value. See Chapter 2018-84, Section 1, Laws of Florida (CS/CS/SB 740).

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- 1 • Amended section 196.24, F.S., relating to qualification for an exemption, to remove
2 the statutory requirement for an unmarried surviving spouse to have been married
3 to a disabled veteran for at least five years on the date of the veteran's death. See
4 Chapter 2018-118, Section 16, Laws of Florida (CS/HB 7087).
5
- 6 • Amended section 196.173, F.S., relating to the exemption for deployed service
7 members, to provide a December 31, 2014, ending date for Operation Enduring
8 Freedom, which began on October 7, 2001. The amendment also removed
9 Operation New Dawn, which began on September 1, 2010, and ended on December
10 15, 2011, and the amendment removed Operation Odyssey Dawn, which began on
11 March 19, 2011, and ended on October 31, 2011. See Chapter 2018-118, Section 15,
12 Laws of Florida (CS/HB 7087).
13
- 14 • Amended section 163.01, F.S., to clarify that the exemption applies whether the
15 property is within or outside the jurisdiction of the legal entity that owns it. The
16 amendment also clarifies that the exemption applies regardless of whether the legal
17 entity enters into agreements with private entities to manage, operate, or improve
18 the utilities the separate entity owns. See Chapter 2018-118, Section 7, Laws of Florida
19 (CS/HB 7087).
20
- 21 • Created section 193.461(7)(c), F.S., to provide that agricultural lands that are not
22 being used for agricultural production as a result of a natural disaster, for which the
23 Governor declared a state of emergency, must continue to be classified as
24 agricultural lands for five years following termination of the emergency declaration.
25 However, if the lands are diverted to nonagricultural use during or after the five-year
26 recovery period, the lands must be assessed at just value under section 193.011,
27 F.S. This provision applies retroactively to natural disasters that occurred on or after
28 July 1, 2017. See Chapter 2018-84, Section 1, Laws of Florida (CS/CS/SB 740).
29
- 30 • Created section 193.461(8), F.S., to provide that lands classified as agricultural,
31 which are not being used for agricultural production due to a hurricane that made
32 landfall in this state during 2017, must continue to be classified as agricultural
33 through December 31, 2022, unless the lands are converted to a nonagricultural
34 use. Lands converted to nonagricultural use are not covered by this subsection and
35 must be assessed as otherwise provided by law. This amendment applies to the
36 2018 tax roll. See Chapter 2018-118, Sections 12 and 13, Laws of Florida (CS/HB 7087).
37
- 38 • Created section 193.155(8)(m), F.S., to provide, for purposes of the portability
39 assessment reduction, that an owner of homestead property that was significantly
40 damaged or destroyed as a result of a named tropical storm or hurricane, may elect,
41 in the calendar year following the named tropical storm or hurricane, to have the
42 significantly damaged or destroyed homestead deemed to have been abandoned as
43 of the date of the named tropical storm or hurricane even though the owner received
44 a homestead exemption on the property as of January 1 of the year immediately
45 following the named tropical storm or hurricane. This election is available only if the
46 owner establishes a new homestead as of January 1 of the second year immediately

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1 following the storm or hurricane. This provision applies to homestead property
2 damaged or destroyed on or after January 1, 2017. See Chapter 2018-118, Section 9,
3 Laws of Florida (CS/HB 7087).

6 **2017 Changes to Statutory Law**

7 In 2017, several changes to statutory law were enacted. Except where other dates are
8 noted, these changes affected administrative reviews of assessments beginning in
9 2017. These changes are summarized below and are addressed where necessary in
10 various modules of this training. Please refer to the chapter law and statutes to read the
11 legislative changes in context with the surrounding statutory language. The chapter laws
12 are available at <http://laws.flrules.org/>

13
14 Legislation enacted in 2017:

- 15
16 • Created section 196.102, F.S., to: provide an exemption for certain first responders
17 whose total and permanent disability occurred in the line of duty, and for surviving
18 spouses; extend the exemption application deadline for 2017 to August 1, 2017, or
19 later if extenuating circumstances are shown; and provide for petitions to the value
20 adjustment board for denials of such exemptions. This change is effective June 14,
21 2017 and applies to assessments and administrative reviews beginning in 2017. See
22 Chapter 2017-105, Sections 2 and 3, Laws of Florida (CS/HB 455).
- 23
24 • Amended section 196.1983, F.S., to clarify provisions requiring landlords to reduce
25 lease payments made by charter schools so that the schools receive the full benefit
26 derived by the landlord from the exemption, effective retroactively to January 1,
27 2017. See Chapter 2017-36, Section 7, Laws of Florida (HB 7109).
- 28
29 • Amended section 192.001(11)(c), F.S., to clarify that the term “inventory” includes
30 specified construction and agricultural equipment weighing 1,000 pounds or more
31 that is returned to a dealership under a rent-to-purchase option and held for sale to
32 customers in the ordinary course of business. This change is effective July 1, 2017,
33 and applies to assessments and administrative reviews beginning in 2018. See
34 Chapter 2017-36, Sections 2 and 59, Laws of Florida (HB 7109).
- 35
36 • Amended section 196.1978(2), F.S., to provide a 50 percent discount on property
37 taxes for specified portions of certain multifamily properties that offer affordable
38 housing to specified low-income persons and families, if application is made by
39 March 1. This amendment also specifies procedures for the application of the
40 discount and provides conditions for the termination of the discount. The amendment
41 is effective starting in 2018. See Chapter 2017-36, Section 6, Laws of Florida (HB 7109).
- 42
43 • Amended section 196.012(9), F.S., to include, in the definitions of “nursing home” or
44 “home for special services”, institutions that possess a valid license under chapter
45 429, part I, F.S., and to make this amendment applicable to the 2017 property tax
46 roll. This change is effective May 25, 2017 and applies to assessments and

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1 administrative reviews beginning in 2017. See Chapter 2017-36, Sections 3 and 4, Laws
2 of Florida (HB 7109).

- 3
- 4 • Amended section 196.1975(4)(c), F.S., to provide that a not-for-profit corporation
5 applying for an exemption for units or apartments under paragraph (4)(a) of the
6 statute must file, with the application, an affidavit from each person who occupies a
7 unit stating the person's income; the corporation is not required to provide an
8 affidavit from a resident who is a totally and permanently disabled veteran who
9 meets the requirements of s. 196.081, F.S. The amendment also provides that, if
10 the property appraiser determines that additional documentation proving an affiant's
11 income is necessary, the property appraiser may request it. This change is effective
12 July 1, 2017, and applies to assessments and administrative reviews beginning in
13 2018. See Chapter 2017-36, Sections 5 and 59, Laws of Florida (HB 7109).
 - 14
 - 15 • Amended section 193.624, F.S., to provide, for nonresidential real property, that 80
16 percent of the just value attributable to a renewable energy source device may not
17 be considered in determining the assessed value of the property; this provision
18 applies to devices installed on nonresidential property on or after January 1, 2018,
19 except in a fiscally constrained county for which application for comprehensive plan
20 amendment or planned unit development zoning is made by December 31, 2017.
21 This change is effective July 1, 2017, and applies to assessments and administrative
22 reviews beginning in 2018. See Chapter 2017-118, Sections 2 and 8, Laws of Florida
23 (CS/SB 90).
 - 24
 - 25 • Created section 196.182, F.S., to provide an exemption, from the tangible personal
26 property tax, of 80 percent of the assessed value of certain renewable energy
27 source devices, if the device, as defined in s. 193.624, is considered tangible
28 personal property and:
29
 - 30 (a) Is installed on real property on or after January 1, 2018;
 - 31 (b) Was installed before January 1, 2018, to supply a municipal electric utility located
32 within a consolidated government; or
 - 33 (c) Was installed after August 30, 2016, on municipal land as part of a described
34 project supplying a municipal electric utility for certain purposes.

35
36 This legislation also specifies conditions under which the exemption would not apply,
37 and specifies conditions under which the exemption would apply to devices affixed
38 to property owned or leased by the U.S. Department of Defense. This change is
39 effective July 1, 2017, and applies to assessments and administrative reviews
40 beginning in 2018. See Chapter 2017-118, Sections 3 and 8, Laws of Florida (CS/SB 90).

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Statutory Law Effective Beginning With 2009 Assessments

An important change to Florida Statutes was passed in the 2009 legislative session and then approved by the Governor on June 4, 2009. See section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

A complete copy of this legislation is available at the following web address:
http://laws.flrules.org/files/Ch_2009-121.pdf

This law applies to the administrative review of assessments beginning in 2009.

Board attorneys and special magistrates are responsible for ensuring that this important legislation is implemented for all administrative reviews of assessments.

This law provides important benefits to taxpayers. Boards, board attorneys, and special magistrates must comply with the law to ensure its implementation.

Note: More detailed information on these 2009 enactments is presented in following modules of this training, with additional explanations and examples in Modules 6 and 8 in a section titled “The Seven Overarching Standards for Valid Just Valuations.”

Administrative Rules and Forms

The Department’s rules and forms for value adjustment boards include:

1. Rule Chapter 12D-9 and accompanying forms;
2. Rule Chapter 12D-10; and
3. Rule Chapter 12D-16.002, F.A.C., which includes forms to be used by the Board.

These rules and forms are contained in the Department’s Uniform Policies and Procedures Manual for value adjustment boards, and are available on the Department’s website at the following link: <http://floridarevenue.com/property/Pages/VAB.aspx>

Boards, Board clerks, taxpayers, property appraisers, and tax collectors are required to follow these rules, as stated in sections 195.027(1) and 194.011(5)(b), F.S.

These rules supersede any local rules or prior Department rules on the subject.

Rule Chapter 12D-9, F.A.C., is the primary component of the Department’s Uniform Policies and Procedures Manual for value adjustment boards, and also is a primary component of this training for value adjustment boards and special magistrates.

Uniform Policies and Procedures Manual and Accompanying Documents

Section 194.011(5)(b), Florida Statutes, states:

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1 *“The department shall develop a uniform policies and procedures manual that shall be*
2 *used by value adjustment boards, special magistrates, and taxpayers in proceedings*
3 *before value adjustment boards. The manual shall be made available, at a minimum, on*
4 *the department’s website and on the existing websites of the clerks of circuit courts.”*

5
6 The Florida Department of Revenue has developed the Uniform Policies and
7 Procedures Manual and has made it available, along with accompanying documents, on
8 its website as stated below.

9
10 Along with the accompanying documents listed below, the Uniform Policies and
11 Procedures Manual must be made available on the existing website of the Board clerk
12 in each of the 67 counties.

13
14 The Department requests that Board clerks retain and use the document titles as
15 provided in this manual when placing these documents on their websites.

The Uniform Policies and Procedures Manual and Accompanying Documents:

16
17 The three sets of documents described below are available on the Department’s
18 website at <http://floridarevenue.com/property/Pages/VAB.aspx>

- 19
20
21 1. The “Uniform Policies and Procedures Manual” for value adjustment boards, which is
22 composed of the following items:
23
24 a) Taxpayer rights as provided in Florida Statutes and the recently adopted rules;
25
26 b) The recently adopted rules of procedure for value adjustment board proceedings;
27
28 c) Recently adopted forms for value adjustment boards;
29
30 d) Florida Statutes regarding value adjustment board procedures; and
31
32 e) A notice regarding the use of case law.

33
34 Accompanying the Uniform Policies and Procedures Manual are two sets of documents
35 titled:

- 36
37 2. “Other Legal Resources Including Statutory Criteria,” and
38
39 3. “Reference Materials Including Guidelines.”

40
41 Each of these three sets of documents contains an introduction that provides orientation
42 on the authority, content, and use of that respective set.

43
44 Board clerks must ensure that all members of the Board, special magistrates, and
45 Board attorneys are provided with a copy of these three sets of documents.
46

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The Value Adjustment Board and Government-in-the-Sunshine

An opinion of the Florida Attorney General has concluded that the official acts of both Boards and special magistrates are subject to Florida's Government-in-the-Sunshine law found in section 286.011, F.S. See Attorney General Opinion [2010-15](#).

In the opinion, the Attorney General recognized that a value adjustment board is a quasi-judicial governmental body and that a special magistrate is a quasi-judicial officer who "stands in the shoes" of the Board in carrying out decision-making duties delegated by the Board. See Attorney General Opinion [2010-15](#).

The Board attorney shall advise the Board, Board clerk, and special magistrates on public meeting and open government laws. See Rule 12D-9.009(1)(e)4., F.A.C.

At one of its organizational meetings held prior to conducting hearings, the Board shall make available to the public, special magistrates, and Board members the requirements of Florida's Government in the Sunshine / open government laws including information on where to obtain the current Government-in-the-Sunshine manual. See Rule 12D-9.013(1)(g), F.A.C.

Florida's Government-in-the-Sunshine Manual is available at the following internet link: <http://www.myfloridalegal.com/sun.nsf/sunmanual>

Orientation meetings conducted by Board designees for special magistrates shall be related to local operating or ministerial procedures only and shall be open to the public for observation. See Rule 12D-9.012(5), F.A.C.

* These meetings or orientations must be reasonably noticed to the public in the same manner as an organizational meeting of the Board, or posted as reasonable notice on the Board clerk's website. See Rule 12D-9.012(6), F.A.C.

All petition hearings shall be open to the public, including hearings conducted by electronic media. See Rule 12D-9.024(2) and 12D-9.026(4), F.A.C.

The Department's training for special magistrates shall be open to the public. See Rule 12D-9.012(2), F.A.C.

Complete Text of Specific Legal Provisions for Taxpayer Rights

Florida law provides specific rights for property taxpayers.

These rights are in section 192.0105, F.S., and in Rule 12D-9.001, F.A.C.

These provisions of law are presented in their entirety in following sections of Module 1.

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1 Boards, Board legal counsel, Board clerks, special magistrates, and property appraisers
2 must understand these taxpayer rights and take the steps necessary to ensure that
3 these rights are afforded all property taxpayers.
4

6 **Taxpayer Rights in Section 192.0105, F.S.**

7 The entire text of this section of Florida Statutes is presented below in italics, with
8 legislative history and notes immediately following.
9

10 *“There is created a Florida Taxpayer’s Bill of Rights for property taxes and assessments*
11 *to guarantee that the rights, privacy, and property of the taxpayers of this state are*
12 *adequately safeguarded and protected during tax levy, assessment, collection, and*
13 *enforcement processes administered under the revenue laws of this state. The*
14 *Taxpayer’s Bill of Rights compiles, in one document, brief but comprehensive*
15 *statements that summarize the rights and obligations of the property appraisers, tax*
16 *collectors, clerks of the court, local governing boards, the Department of Revenue, and*
17 *taxpayers. Additional rights afforded to payors of taxes and assessments imposed*
18 *under the revenue laws of this state are provided in s. 213.015. The rights afforded*
19 *taxpayers to assure that their privacy and property are safeguarded and protected*
20 *during tax levy, assessment, and collection are available only insofar as they are*
21 *implemented in other parts of the Florida Statutes or rules of the Department of*
22 *Revenue. The rights so guaranteed to state taxpayers in the Florida Statutes and the*
23 *departmental rules include:*

24 (1) *THE RIGHT TO KNOW.—*

25
26
27 (a) *The right to be sent a notice of proposed property taxes and proposed or adopted*
28 *non-ad valorem assessments (see ss. 194.011(1), 200.065(2)(b) and (d) and (13)(a),*
29 *and 200.069). The notice must also inform the taxpayer that the final tax bill may*
30 *contain additional non-ad valorem assessments (see s. 200.069(9)).*

31
32 (b) *The right to notification of a public hearing on each taxing authority’s tentative*
33 *budget and proposed millage rate and advertisement of a public hearing to finalize the*
34 *budget and adopt a millage rate (see s. 200.065(2)(c) and (d)).*

35
36 (c) *The right to advertised notice of the amount by which the tentatively adopted*
37 *millage rate results in taxes that exceed the previous year’s taxes (see s. 200.065(2)(d)*
38 *and (3)). The right to notification of a comparison of the amount of the taxes to be levied*
39 *from the proposed millage rate under the tentative budget change, compared to the*
40 *previous year’s taxes, and also compared to the taxes that would be levied if no budget*
41 *change is made (see ss. 200.065(2)(b) and 200.069(2), (3), (4), and (8)).*

42
43 (d) *The right that the adopted millage rate will not exceed the tentatively adopted*
44 *millage rate. If the tentative rate exceeds the proposed rate, each taxpayer shall be*
45 *mailed notice comparing his or her taxes under the tentatively adopted millage rate to*

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1 *the taxes under the previously proposed rate, before a hearing to finalize the budget*
2 *and adopt millage (see s. 200.065(2)(d)).*

3
4 *(e) The right to be sent notice by first-class mail of a non-ad valorem assessment*
5 *hearing at least 20 days before the hearing with pertinent information, including the total*
6 *amount to be levied against each parcel. All affected property owners have the right to*
7 *appear at the hearing and to file written objections with the local governing Board (see*
8 *s. 197.3632(4)(b) and (c) and (10)(b)2.b.).*

9
10 *(f) The right of an exemption recipient to be sent a renewal application for that*
11 *exemption, the right to a receipt for homestead exemption claim when filed, and the*
12 *right to notice of denial of the exemption (see ss. 196.011(6), 196.131(1), 196.151, and*
13 *196.193(1)(c) and (5)).*

14
15 *(g) The right, on property determined not to have been entitled to homestead*
16 *exemption in a prior year, to notice of intent from the property appraiser to record notice*
17 *of tax lien and the right to pay tax, penalty, and interest before a tax lien is recorded for*
18 *any prior year (see s. 196.161(1)(b)).*

19
20 *(h) The right to be informed during the tax collection process, including: notice of tax*
21 *due; notice of back taxes; notice of late taxes and assessments and consequences of*
22 *nonpayment; opportunity to pay estimated taxes and non-ad valorem assessments*
23 *when the tax roll will not be certified in time; notice when interest begins to accrue on*
24 *delinquent provisional taxes; notice of the right to prepay estimated taxes by installment;*
25 *a statement of the taxpayer's estimated tax liability for use in making installment*
26 *payments; and notice of right to defer taxes and non-ad valorem assessments on*
27 *homestead property (see ss. 197.322(3), 197.3635, 197.343, 197.363(2)(c), 197.222(3)*
28 *and (5), 197.2301(3), 197.3632(8)(a), 193.1145(10)(a), and 197.254(1)).*

29
30 *(i) The right to an advertisement in a newspaper listing names of taxpayers who are*
31 *delinquent in paying tangible personal property taxes, with amounts due, and giving*
32 *notice that interest is accruing at 18 percent and that, unless taxes are paid, warrants*
33 *will be issued, prior to petition made with the circuit court for an order to seize and sell*
34 *property (see s. 197.402(2)).*

35
36 *(j) The right to be sent a notice when a petition has been filed with the court for an*
37 *order to seize and sell property and the right to be mailed notice, and to be served*
38 *notice by the sheriff, before the date of sale, that application for tax deed has been*
39 *made and property will be sold unless back taxes are paid (see ss. 197.413(5),*
40 *197.502(4)(a), and 197.522(1)(a) and (2)).*

41
42 *(k) The right to have certain taxes and special assessments levied by special districts*
43 *individually stated on the "Notice of Proposed Property Taxes and Proposed or Adopted*
44 *Non-Ad Valorem Assessments" (see s. 200.069).*

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1 *Notwithstanding the right to information contained in this subsection, under s. 197.122*
2 *property owners are held to know that property taxes are due and payable annually and*
3 *are charged with a duty to ascertain the amount of current and delinquent taxes and*
4 *obtain the necessary information from the applicable governmental officials.*

5
6 **(2) THE RIGHT TO DUE PROCESS.—**
7

8 *(a) The right to an informal conference with the property appraiser to present facts the*
9 *taxpayer considers to support changing the assessment and to have the property*
10 *appraiser present facts supportive of the assessment upon proper request of any*
11 *taxpayer who objects to the assessment placed on his or her property (see s.*
12 *194.011(2)).*
13

14 *(b) The right to petition the value adjustment board over objections to assessments,*
15 *denial of exemption, denial of agricultural classification, denial of historic classification,*
16 *denial of high-water recharge classification, disapproval of tax deferral, and any*
17 *penalties on deferred taxes imposed for incorrect information willfully filed. Payment of*
18 *estimated taxes does not preclude the right of the taxpayer to challenge his or her*
19 *assessment (see ss. 194.011(3), 196.011(6) and (9)(a), 196.151, 196.193(1)(c) and (5),*
20 *193.461(2), 193.503(7), 193.625(2), 197.2425, 197.301(2), and 197.2301(11)).*
21

22 *(c) The right to file a petition for exemption or agricultural classification with the value*
23 *adjustment board when an application deadline is missed, upon demonstration of*
24 *particular extenuating circumstances for filing late (see ss. 193.461(3)(a) and*
25 *196.011(1), (7), (8), and (9)(e)).*
26

27 *(d) The right to prior notice of the value adjustment board's hearing date, the right to*
28 *the hearing at the scheduled time, the right to the hearing at the scheduled time, and*
29 *the right to have the hearing rescheduled if the hearing is not commenced within a*
30 *reasonable time, not to exceed 2 hours, after the scheduled time (see s. 194.032(2)).*
31

32 *(e) The right to notice of date of certification of tax rolls and receipt of property record*
33 *card if requested (see ss. 193.122(2) and (3) and 194.032(2)).*
34

35 *(f) The right, in value adjustment board proceedings, to have all evidence presented*
36 *and considered at a public hearing at the scheduled time, to be represented by a person*
37 *specified in s. 194.034(1)(a), (b), or (c), to have witnesses sworn and cross-examined,*
38 *and to examine property appraisers or evaluators employed by the board who present*
39 *testimony (see ss. 194.034(1)(d) and (4), and 194.035(2)).*
40

41 *(g) The right to be sent a timely written decision by the value adjustment board*
42 *containing findings of fact and conclusions of law and reasons for upholding or*
43 *overturning the determination of the property appraiser, and the right to advertised*
44 *notice of all board actions, including appropriate narrative and column descriptions, in*
45 *brief and nontechnical language (see ss. 194.034(2) and 194.037(3)).*
46

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1 (h) *The right at a public hearing on non-ad valorem assessments or municipal special*
2 *assessments to provide written objections and to provide testimony to the local*
3 *governing board (see ss. 197.3632(4)(c) and 170.08).*

4
5 (i) *The right to bring action in circuit court to contest a tax assessment or appeal value*
6 *adjustment board decisions to disapprove exemption or deny tax deferral (see ss.*
7 *194.036(1)(c) and (2), 194.171, 196.151, and 197.2425.*

8
9 (3) **THE RIGHT TO REDRESS.—**

10
11 (a) *The right to discounts for early payment on all taxes and non-ad valorem*
12 *assessments collected by the tax collector, except for partial payments as defined in s.*
13 *197.374, the right to pay installment payments with discounts, and the right to pay*
14 *delinquent personal property taxes under a payment program when implemented by the*
15 *county tax collector (see ss. 197.162, 197.3632(8) and (10)(b)3., 197.222(1), and*
16 *197.4155).*

17
18 (b) *The right, upon filing a challenge in circuit court and paying taxes admitted in good*
19 *faith to be owing, to be issued a receipt and have suspended all procedures for the*
20 *collection of taxes until the final disposition of the action (see s. 194.171(3)).*

21
22 (c) *The right to have penalties reduced or waived upon a showing of good cause when*
23 *a return is not intentionally filed late, and the right to pay interest at a reduced rate if the*
24 *court finds that the amount of tax owed by the taxpayer is greater than the amount the*
25 *taxpayer has in good faith admitted and paid (see ss. 193.072(4) and 194.192(2)).*

26
27 (d) *The right to a refund when overpayment of taxes has been made under specified*
28 *circumstances (see ss. 193.1145(8)(e) and 197.182(1)).*

29
30 (e) *The right to an extension to file a tangible personal property tax return upon*
31 *making proper and timely request (see s. 193.063).*

32
33 (f) *The right to redeem real property and redeem tax certificates at any time before full*
34 *payment for a tax deed is made to the clerk of the court, including documentary stamps*
35 *and recording fees, and the right to have tax certificates canceled if sold where taxes*
36 *had been paid or if other error makes it void or correctable. Property owners have the*
37 *right to be free from contact by a certificateholder for 2 years after April 1 of the year the*
38 *tax certificate is issued (see ss. 197.432(13) and (14), 197.442(1), 197.443, and*
39 *197.472(1) and (6)).*

40
41 (g) *The right of the taxpayer, property appraiser, tax collector, or the department, as*
42 *the prevailing party in a judicial or administrative action brought or maintained without*
43 *the support of justiciable issues of fact or law, to recover all costs of the administrative*
44 *or judicial action, including reasonable attorney's fees, and of the department and the*
45 *taxpayer to settle such claims through negotiations (see ss. 57.105 and 57.111).*

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1 (4) *THE RIGHT TO CONFIDENTIALITY.—*

2
3 (a) *The right to have information kept confidential, including federal tax information, ad*
4 *valorem tax returns, social security numbers, all financial records produced by the*
5 *taxpayer, Form DR-219 returns for documentary stamp tax information, and sworn*
6 *statements of gross income, copies of federal income tax returns for the prior year,*
7 *wage and earnings statements (W-2 forms), and other documents (see ss. 192.105,*
8 *193.074, 193.114(5), 195.027(3) and (6), and 196.101(4)(c)).*

9
10 (b) *The right to limiting access to a taxpayer’s records by a property appraiser, the*
11 *Department of Revenue, and the Auditor General only to those instances in which it is*
12 *determined that such records are necessary to determine either the classification or the*
13 *value of taxable nonhomestead property (see s. 195.027(3)).”*

14
15 **History.**—ss. 11, 15, ch. 2000-312; s. 7, ch. 2001-137; s. 1, ch. 2002-18; s. 2, ch. 2003-34; s. 13,
16 ch. 2004-5; s. 3, ch. 2006-312; s. 34, ch. 2008-4; s. 6, ch. 2009-157; s. 2, ch. 2009-165; s. 21, ch.
17 2010-5; s. 53, ch. 2011-151; s. 2, ch. 2012-193; s. 1, ch. 2016-128.

18
19
20 **Taxpayer Rights in Rule 12D-9.001, F.A.C.**

21 This rule section is titled “Taxpayer Rights in Value Adjustment Board Proceedings.”

22
23 The entire text of this section of the Florida Administrative Code is presented below in
24 italics.

25
26 “(1) *Taxpayers are granted specific rights by Florida law concerning value adjustment*
27 *board procedures.*

28
29 (2) *These rights include:*

30
31 (a) *The right to be notified of the assessment of each taxable item of property in*
32 *accordance with the notice provisions set out in Florida Statutes for notices of proposed*
33 *property taxes;*

34
35 (b) *The right to request an informal conference with the property appraiser regarding the*
36 *correctness of the assessment or to petition for administrative or judicial review of*
37 *property assessments. An informal conference with the property appraiser is not a*
38 *prerequisite to filing a petition for administrative review or an action for judicial review;*
39

40 (c) *The right to file a petition on a form provided by the county that is substantially the*
41 *same as the form prescribed by the department or to file a petition on the form provided*
42 *by the department for this purpose;*

43
44 (d) *The right to state on the petition the approximate time anticipated by the taxpayer to*
45 *present and argue his or her petition before the Board;*
46

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- 1 (e) *The right to authorize another person to file a board petition on the taxpayer's*
2 *property assessment;*
3
- 4 (f) *The right, regardless of whether the petitioner initiates the evidence exchange, to*
5 *receive from the property appraiser a copy of the current property record card*
6 *containing information relevant to the computation of the current assessment, with*
7 *confidential information redacted. This includes the right to receive such property record*
8 *card when the property appraiser receives the petition from the board clerk, at which*
9 *time the property appraiser will either send the property record card to the petitioner or*
10 *notify the petitioner how to obtain it online;*
11
- 12 (g) *The right to be sent prior notice of the date for the hearing of the taxpayer's petition*
13 *by the value adjustment board and the right to the hearing within a reasonable time of*
14 *the scheduled hearing;*
15
- 16 (h) *The right to reschedule a hearing a single time for good cause, as described in this*
17 *chapter;*
18
- 19 (i) *The right to be notified of the date of certification of the county's tax rolls;*
20
- 21 (j) *The right to represent himself or herself or to be represented by another person who*
22 *is authorized by the taxpayer to represent the taxpayer before the board;*
23
- 24 (k) *The right, in counties that use special magistrates, to a hearing conducted by a*
25 *qualified special magistrate appointed and scheduled for hearings in a manner in which*
26 *the board, board attorney, and board clerk do not consider any assessment reductions*
27 *recommended by any special magistrate in the current year or in any previous year.*
28
- 29 (l) *The right to have evidence presented and considered at a public hearing or at a time*
30 *when the petitioner has been given reasonable notice;*
31
- 32 (m) *The right to have witnesses sworn and to cross-examine the witnesses;*
33
- 34 (n) *The right to be issued a timely written decision within 20 calendar days of the last*
35 *day the board is in session pursuant to Section 194.034, F.S., by the value adjustment*
36 *board containing findings of fact and conclusions of law and reasons for upholding or*
37 *overturning the determination of the property appraiser or tax collector;*
38
- 39 (o) *The right to advertised notice of all board actions, including appropriate narrative*
40 *and column descriptions, in brief and nontechnical language;*
41
- 42 (p) *The right to bring an action in circuit court to appeal a value adjustment board*
43 *valuation decision or decision to disapprove a classification, exemption, portability*
44 *assessment difference transfer, or to deny a tax deferral or to impose a tax penalty;*
45

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- 1 *(q) The right to have federal tax information, ad valorem tax returns, social security*
- 2 *numbers, all financial records produced by the taxpayer and other confidential taxpayer*
- 3 *information, kept confidential; and*
- 4
- 5 *(r) The right to limiting the property appraiser's access to a taxpayer's records to only*
- 6 *those instances in which it is determined that such records are necessary to determine*
- 7 *either the classification or the value of taxable nonhomestead property."*

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Links to Resources on the Internet

Department of Revenue's Rules for Value Adjustment Boards on the internet at:

* Rule Chapter 12D-9, F.A.C., at:

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=12D-9>

* Rule Chapter 12D-10, F.A.C., at:

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=12D-10>

* Rule Chapter 12D-16, F.A.C., at:

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=12D-16>

Department of Revenue's Forms for Value Adjustment Boards on the internet at:

<http://floridarevenue.com/property/Pages/VAB.aspx>

Value Adjustment Board Bulletins from the
Department of Revenue on the internet at:

<https://revenuелaw.floridarevenue.com/Pages/Browse.aspx#3-18>

Department of Revenue's
Value Adjustment Board Process Calendar on the internet at:

<http://floridarevenue.com/property/Documents/pt902020.pdf>

Government-in-the-Sunshine Manual on the internet at:

<http://www.myfloridalegal.com/sun.nsf/sunmanual>

Recent Attorney General Opinions Relating to the
Value Adjustment Board Process on the internet at:

<https://revenuелaw.floridarevenue.com/Pages/Browse.aspx#3-18>

Attorney General Opinions on the internet at:

<http://myfloridalegal.com/ago.nsf/Opinions>

Florida Statutes on the internet at:

<http://www.flsenate.gov/Laws/Statutes>

NOTE: Other links to relevant information are contained in the other training modules.

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Module 2: The Roles of Participants in the Value Adjustment Board Process

19 **Training Module 2 addresses the following topics:**

- 20
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35
- The Composition of the Value Adjustment Board
 - The Role of the Value Adjustment Board
 - The Role of the Clerk of the Value Adjustment Board
 - Requirements for Appointment of Board Legal Counsel
 - The Role of Legal Counsel to the Value Adjustment Board
 - Requirements for Appointment of Special Magistrates
 - The Role of Special Magistrates
 - The Role of the Property Appraiser
 - The Role of the Petitioner

36 **Learning Objectives**

37 After completing this training module, the learner should be able to:

- 38
39
40
41
42
43
44
45
- Recognize the required composition of the value adjustment board
 - Identify the responsibilities of the value adjustment board
 - Recognize the responsibilities of the Board clerk
 - Distinguish between the roles of the Board clerk and Board legal counsel
 - Identify the criteria for the appointment of Board legal counsel
 - Identify the responsibilities of the Board legal counsel
 - Recognize the requirements for legal advice from Board legal counsel
 - Identify the criteria for the appointment of special magistrates
 - Recognize the general responsibilities of special magistrates
 - Identify the property appraiser's responsibilities
 - Distinguish between the roles of the Board clerk and the property appraiser
 - Recognize the role of the petitioner

36 **The Composition of the Value Adjustment Board**

37 The entire text of Rule 12D-9.004, F.A.C., titled "Composition of the Value Adjustment
38 Board", is presented below in italics.

39
40 *"(1) Every county shall have a value adjustment board which consists of:*

41
42 *(a) Two members of the governing body of the county, elected by the governing body*
43 *from among its members, one of whom shall be elected as the chair of the value*
44 *adjustment board;*

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- 1 *(b) One member of the school board of the county, elected by the school board from*
2 *among its members; and*
3
- 4 *(c) Two citizen members:*
5
- 6 *1. One who owns homestead property in the county appointed by the county's*
7 *governing body;*
8
- 9 *2. One who owns a business that occupies commercial space located within the school*
10 *district appointed by the school board of the county. This person must, during the entire*
11 *course of service, own a commercial enterprise, occupation, profession, or trade*
12 *conducted from a commercial space located within the school district and need not be*
13 *the sole owner.*
14
- 15 *3. Citizen members must not be:*
16
- 17 *a. A member or employee of any taxing authority in this state;*
18
- 19 *b. A person who represents property owners, property appraisers, tax collectors, or*
20 *taxing authorities in any administrative or judicial review of property taxes.*
21
- 22 *4. Citizen members shall be appointed in a manner to avoid conflicts of interest or the*
23 *appearance of conflicts of interest.*
24
- 25 *(2)(a) Each elected member of the value adjustment board shall serve on the board until*
26 *he or she is replaced by a successor elected by his or her respective governing body or*
27 *school board or is no longer a member of the governing body or school board of the*
28 *county.*
29
- 30 *(b) When an elected member of the value adjustment board ceases being a member of*
31 *the governing body or school board whom he or she represents, that governing body or*
32 *school board must elect a replacement.*
33
- 34 *(c) When the citizen member of the value adjustment board appointed by the governing*
35 *body of the county is no longer an owner of homestead property within the county, the*
36 *governing body must appoint a replacement.*
37
- 38 *(d) When the citizen member appointed by the school board is no longer an owner of a*
39 *business occupying commercial space located within the school district, the school*
40 *board must appoint a replacement.*
41
- 42 *(3)(a) At the same time that it selects a primary member of the value adjustment board,*
43 *the governing body or school board may select an alternate to serve in place of the*
44 *primary member as needed. The method for selecting alternates is the same as that for*
45 *selecting the primary members.*
46

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1 *(b) At any time during the value adjustment board process the chair of the county*
2 *governing body or the chair of the school board may appoint a temporary replacement*
3 *for its elected member of the value adjustment board or for a citizen member it has*
4 *appointed to serve on the value adjustment board.*

5
6 *(4)(a) To have a quorum of the value adjustment board, the members of the board who*
7 *are present must include at least:*

8
9 *1. One member of the governing body of the county;*

10
11 *2. One member of the school board; and*

12
13 *3. One of the two citizen members.*

14
15 *(b) The quorum requirements of Section 194.015, F.S., may not be waived by anyone,*
16 *including the petitioner.*

17
18 *(5) The value adjustment board cannot hold its organizational meeting until all members*
19 *of the board are appointed, even if the number and type of members appointed are*
20 *sufficient to constitute a quorum. If board legal counsel has not been previously*
21 *appointed for that year, such appointment must be the first order of business.”*

The Role of the Value Adjustment Board

22
23
24
25 The general role of the value adjustment board is to hear appeals filed by petitioners
26 regarding certain determinations of the property appraiser or tax collector.

27
28 The Board may publish fee schedules adopted by the Board. See Rule 12D-9.005(2)(a),
29 F.A.C.

30
31 The Florida Attorney General has recognized that a value adjustment board is a quasi-
32 judicial governmental body that is subject to Florida’s Government-in-the-Sunshine law
33 found in Section 286.011, F.S. See [AGO 2010-15](#).

34
35 * The Board must ensure that all Board meetings are duly noticed under Section
36 286.011, F.S., and are held in accordance with the law. See Rule 12D-9.005(3), F.A.C.

37
38 The Board shall meet not earlier than 30 days and not later than 60 days after the
39 mailing of the notice of proposed property taxes. See Rule 12D-9.005(1)(a), F.A.C.

40
41 * However, no Board hearing shall be held before approval of all or any part of the
42 county’s assessment rolls by the Department of Revenue. See Rule 12D-9.005(1)(a),
43 F.A.C.

44
45 The Board shall meet for the following purposes (See Rule 12D-9.005(1)(a), F.A.C.):
46

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- 1 1. Hearing petitions relating to assessments filed pursuant to Section 194.011(3), F.S.;
- 2
- 3 2. Hearing complaints relating to homestead exemptions as provided for under Section
- 4 196.151, F.S.;
- 5
- 6 3. Hearing appeals from exemptions denied, or disputes arising from exemptions
- 7 granted, upon the filing of exemption applications under Section 196.011, F.S.;
- 8
- 9 4. Hearing appeals concerning ad valorem tax deferrals and classifications; or
- 10
- 11 5. Hearing appeals from determinations that a change of ownership under Section
- 12 193.155(3), F.S., a change of ownership or control under Section 193.1554(5) or
- 13 193.1555(5), F.S., or a qualifying improvement under Section 193.1555(5), F.S., has
- 14 occurred.
- 15
- 16

17 The Board may not meet earlier than July 1 to hear appeals pertaining to the denial of
18 exemptions, agricultural and high-water recharge classifications, classifications as
19 historic property used for commercial or certain nonprofit purposes, and deferrals. See
20 Rule 12D-9.005(1)(b), F.A.C.

21

22 The Board shall remain in session until its duties are completed concerning all
23 assessment rolls or parts of assessment rolls. See Rule 12D-9.005(1)(c), F.A.C.

24

25 The Board may temporarily recess, but shall reconvene when necessary to hear
26 petitions, complaints, or appeals and disputes filed upon the roll or portion of the roll
27 when approved. See Rule 12D-9.005(1)(c), F.A.C.

28

29 Failure on three occasions in any single tax year for the Board to convene at the
30 scheduled time of meetings of the Board is grounds for removal from office by the
31 Governor for neglect of duties. See Rule 12D-9.005(5), F.A.C.

32

33 The Board shall make its decisions timely so that the Board clerk may observe the
34 requirement that the decisions be issued within 20 calendar days of the last day the
35 Board is in session pursuant to Section 194.034, F.S. See Rule 12D-9.005(1)(c), F.A.C.

36

37 Boards may have additional internal operating procedures, not rules, which do not
38 conflict with, change, expand, suspend, or negate the rules adopted in this rule chapter
39 or other provisions of law, and only to the extent indispensable for the efficient operation
40 of the Board process. See Rule 12D-9.005(2)(a), F.A.C.

41

42 * These internal operating procedures may include methods for creating the verbatim
43 record, provisions for parking by participants, assignment of hearing rooms,
44 compliance with the Americans with Disabilities Act, and other ministerial type
45 procedures. See Rule 12D-9.005(2)(b), F.A.C.

46

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1 The Board shall not provide notices or establish a local procedure instructing petitioners
2 to contact the property appraiser's or tax collector's office or any other agency with
3 questions about Board hearings or procedures. See Rule 12D-9.005(2)(c), F.A.C.

4
5 * The Board, Board legal counsel, Board clerk, special magistrate or other Board
6 representative shall not otherwise enlist the property appraiser's or tax collector's
7 office to perform administrative duties for the Board. See Rule 12D-9.005(2)(c), F.A.C.

8
9 * Personnel performing any of the Board's duties shall be independent of the property
10 appraiser's and tax collector's office. See Rule 12D-9.005(2)(c), F.A.C.

11
12 However, Rule 12D-9.005, F.A.C., does not prevent:

- 13
14 1. The Board clerk or personnel performing Board duties from referring petitioners to
15 the property appraiser or tax collector for issues within the responsibility of the
16 property appraiser or tax collector; or
17
18 2. The property appraiser from providing data to assist the Board clerk with the notice
19 of tax impact. See Rule 12D-9.005(2)(c), F.A.C.

20
21 Other duties of value adjustment boards are set forth in other areas of Florida law.
22 Value adjustment boards shall perform all duties required by law and shall abide by all
23 limitations on their authority as provided by law. See Rule 12D-9.005(4), F.A.C.

The Role of the Clerk of the Value Adjustment Board

24
25
26 The clerk of the governing body of the county shall be the clerk of the value adjustment
27 board. See Rule 12D-9.006(1), F.A.C.

28
29
30 The Board clerk may delegate to a member of his or her staff the day-to-day
31 responsibilities for the Board, but is ultimately responsible for the operation of the
32 Board. See Rule 12D-9.006(2), F.A.C.

33
34 It is the Board clerk's responsibility to verify, through Board legal counsel, that the Board
35 has met all of the requirements for the organizational meeting before the Board or
36 special magistrates hold hearings. See Rule 12D-9.007(1), F.A.C.

37
38 * If the Board clerk determines that any of the requirements are not met, he or she
39 shall contact the Board legal counsel or the Board chair regarding the deficiencies
40 and shall cancel any scheduled hearings until the requirements are met. See Rule
41 12D-9.007(1), F.A.C.

42
43 In counties with a population of more than 75,000, the Board clerk shall provide
44 notification annually to qualified individuals or their professional associations of
45 opportunities to serve as special magistrates. See Rule 12D-9.007(7), F.A.C.

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1 The Board clerk shall make petition forms available to the public upon request. See Rule
2 12D-9.007(2), F.A.C.

3
4 The Board clerk shall receive and acknowledge completed petitions and promptly
5 furnish a copy of all completed and timely filed petitions to the property appraiser or tax
6 collector. See Rule 12D-9.007(3), F.A.C.

7
8 * Alternatively, the property appraiser or the tax collector may obtain the relevant
9 information from the Board clerk electronically. See Rule 12D-9.007(3), F.A.C.

10
11 The Board clerk shall prepare a schedule of appearances before the Board based on
12 petitions timely filed with him or her. See Rule 12D-9.007(4), F.A.C.

13
14 * If the petitioner has indicated on the petition an estimate of the amount of time he or
15 she will need to present and argue the petition, the Board clerk must take this
16 estimate into consideration when scheduling the hearing. See Rule 12D-9.007(4),
17 F.A.C.

18
19 The Board clerk shall schedule hearings to allow sufficient time for evidence to be
20 presented and considered and to allow for hearings to begin at their scheduled time.
21 See Rule 12D-9.007(9), F.A.C.

22
23 * The Board clerk shall advise the Board chair if the Board's tentative schedule for
24 holding hearings is insufficient to allow for proper scheduling. See Rule 12D-9.007(9),
25 F.A.C.

26
27 Under Rule 12D-9.007(5), F.A.C., no less than 25 calendar days before the day of the
28 petitioner's scheduled appearance for the hearing, the Board clerk must:

- 29
30 1. Notify the petitioner of the date and time scheduled for the appearance; and
31
32 2. Simultaneously notify the property appraiser or tax collector.

33
34 Under Rule 12D-9.007(6), F.A.C., if an incomplete petition, which includes a petition not
35 accompanied by the required filing fee, is received within the time required, the Board
36 clerk shall:

- 37
38 1. Notify the petitioner of the incomplete petition; and
39
40 2. Allow the petitioner an opportunity to complete the petition within 10 calendar days
41 from the date the notice of incomplete petition is mailed.

42
43 * The re-filed petition shall be considered timely if completed and filed, including
44 payment of the fee if previously unpaid, within the time frame provided in the
45 Board clerk's notice of incomplete petition. See Rule 12D-9.007(6), F.A.C.

46

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1 The Board clerk shall ensure public notice of and access to all hearings. See Rule 12D-
2 9.007(8), F.A.C.

3
4 * This public notice shall contain a general description of the locations, dates, and
5 times hearings are being scheduled. See Rule 12D-9.007(8), F.A.C.

6
7 * This public notice requirement may be satisfied by making the notice available on
8 the Board clerk's website. See Rule 12D-9.007(8), F.A.C.

9
10 Hearings must be conducted in facilities that are clearly identified for such purpose and
11 are freely accessible to the public while hearings are being conducted. See Rule 12D-
12 9.007(8), F.A.C.

13
14 * The Board clerk shall assure proper signage to identify the hearing facilities. See
15 Rule 12D-9.007(8), F.A.C.

16
17 The Board clerk shall timely notify the parties of the Board's decision so that the
18 decision shall be issued within 20 calendar days of the last day the Board is in session
19 pursuant to section 194.034, F.S., and shall otherwise notify the property appraiser or
20 tax collector of the decision. Notification of the petitioner must be by first class mail or by
21 electronic means as set forth in section 194.034(2) or section 192.048, F.S. See Rule
22 12D-9.007(10), F.A.C.

23
24 In counties using special magistrates, the Board clerk shall also make available to both
25 parties as soon as practicable a copy of the recommended decision of the special
26 magistrate by mail or electronic means. See Rule 12D-9.007(10), F.A.C.

27
28 No party shall have access to decisions prior to any other party. See Rule 12D-9.007(10),
29 F.A.C.

30
31 After the Board has decided all petitions, complaints, appeals and disputes, the Board
32 clerk shall make public notice of the findings and results of the Board in the manner
33 prescribed in Section 194.037, F.S., and by the Department. See Rule 12D-9.007(11),
34 F.A.C.

35
36 Rule 12D-9.007(12), F.A.C., states the following.

37
38 *"The board clerk is the official record keeper for the board and shall maintain a record of*
39 *the proceedings which shall consist of:*

40
41 *(a) All filed documents;*

42
43 *(b) A verbatim record of any hearing;*

44
45 *(c) All tangible exhibits and documentary evidence presented;*

46

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1 (d) Any meeting minutes; and

2

3 (e) Any other documents or materials presented on the record by the parties or by the
4 board or special magistrate.”

5

6 Under Rule 12D-9.007(12), F.A.C., the Board clerk shall maintain the hearing record as
7 follows:

8

9 1. For four years after the final decision has been rendered by the Board, if no appeal
10 is filed in circuit court; or

11

12 2. For five years if an appeal is filed in circuit court; or

13

14 3. If requested by one of the parties, until the final disposition of any subsequent
15 judicial proceeding relating to the property.

16

17 The Board clerk shall make available to the public copies of all additional internal
18 operating procedures and forms of the Board or special magistrates described in Rule
19 12D-9.005, F.A.C., and shall post any such procedures and forms on the Board clerk’s
20 website, if the Board clerk has a website. See Rule 12D-9.007(13), F.A.C.

21

22 * These materials shall be consistent with Department rules and forms. See Rule 12D-
23 9.007(13), F.A.C.

24

25 * Making materials available on a website is sufficient; however, the Board clerk shall
26 make appropriate provisions for persons that have hardship. See Rule 12D-9.007(13),
27 F.A.C.

28

29 The Board clerk shall notify the chief executive officer of each municipality within which
30 petitioned property is located, as provided in Section 193.116, F.S. See Rule 12D-
31 9.007(14), F.A.C.

32

33 The Board clerk shall also publish any notice required by Section 196.194, F.S. See Rule
34 12D-9.007(14), F.A.C.

35

36

Requirements for Appointment of Board Legal Counsel

38 Each value adjustment board must appoint private legal counsel to assist the Board.
39 See Rule 12D-9.008(1), F.A.C.

40

41 Under Rule 12D-9.008(2), F.A.C., to be appointed as Board legal counsel, an attorney:

42

43 1. Must be an attorney in private practice;

44

45 2. Must not be employed by government; and

46

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1 3. Must have practiced law for over five years and must meet the requirements of
2 section 194.015, F.S.

3
4 An attorney may represent more than one value adjustment board. See Rule 12D-
5 9.008(3), F.A.C.

6
7 The private counsel may not represent the property appraiser, the tax collector, any
8 taxing authority, or any property owner in any administrative or judicial review of
9 property taxes. See Section 194.015, F.S.

10
11 * An attorney may represent a Board, even if another member of the attorney's law
12 firm represents one of the parties listed in Section 194.015, F.S., so long as the
13 representation is not before the Board. See Rule 12D-9.008(4), F.A.C.

14
15 The Department has issued two bulletins containing additional information about the
16 qualifications for Board legal counsel. These bulletins are available on the
17 Department's website at the following links:

18
19 [Bulletin 2008-12](#)

20
21 [Bulletin 2008-18](#)

22
23 The Florida Attorney General has issued an opinion regarding the qualifications for
24 Board legal counsel. See AGO [2008-55](#).

25 26 27 **The Role of Legal Counsel to the Value Adjustment Board**

28 Rule 12D-9.009(1), F.A.C., states the following:

29
30 *"The board legal counsel shall have the responsibilities listed below consistent with the*
31 *provisions of law.*

32
33 (a) *The primary role of the board legal counsel shall be to advise the board on all*
34 *aspects of the value adjustment board review process to ensure that all actions*
35 *taken by the board and its appointees meet the requirements of law.*

36
37 (b) *Board legal counsel shall advise the board in a manner that will promote and*
38 *maintain a high level of public trust and confidence in the administrative review*
39 *process.*

40
41 (c) *The board legal counsel is not an advocate for either party in a value adjustment*
42 *board proceeding, but instead ensures that the proceedings are fair and consistent*
43 *with the law.*

44
45 (d) *Board legal counsel shall advise the board of the actions necessary for compliance*
46 *with the law.*

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1
2 (e) *Board legal counsel shall advise the board regarding:*

- 3
4 1. *Composition and quorum requirements;*
5
6 2. *Statutory training and qualification requirements for special magistrates and*
7 *members of the board;*
8
9 3. *Legal requirements for recommended decisions and final decisions;*
10
11 4. *Public meeting and open government laws; and*
12
13 5. *Any other duties, responsibilities, actions or requirements of the board consistent*
14 *with the laws of this state.”*
15

16 Legal counsel must avoid conflicts of interest or the appearance of a conflict of interest
17 in their representation of the Board. See Rule 12D-9.008(5), F.A.C.
18

19 The Board attorney shall review and respond to written complaints alleging
20 noncompliance with the law by the Board, special magistrates, Board clerk, and the
21 parties. See Rule 12D-9.009(1)(f), F.A.C.
22

23 * This requirement does not apply to routine requests for reconsideration, requests for
24 rescheduling, and pleadings and argument in petitions. See Rule 12D-9.009(1)(f),
25 F.A.C.
26

27 * The Board attorney shall send a copy of the complaint along with the response to
28 the Department of Revenue. See Rule 12D-9.009(1)(f), F.A.C.
29

30 Upon being appointed, the Board attorney shall send his or her contact information to
31 the Department of Revenue by mail, fax, or e-mail. See Rule 12D-9.009(2), F.A.C.
32

33 * The contact information must include the legal counsel’s name, mailing address,
34 telephone number, fax number, and e-mail address. See Rule 12D-9.009(2), F.A.C.
35

The Role of Board Legal Counsel Regarding Applicable Statutory Criteria

36 It is critical that the Board attorney assure, by the beginning of the hearing, that the
37 Board or special magistrate is aware of and has copies of the statutory criteria that
38 apply to the petition under review.
39

40
41 * In counties that do not use special magistrates, it is especially important for the
42 Board attorney to provide to each Board member, by the beginning of the hearing,
43 copies of the statutory criteria that apply to the petition under review and to clearly
44 answer any questions Board members may have regarding such criteria.
45
46

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1 **Requirements for Appointment of Special Magistrates**

2 In counties with populations of more than 75,000, the Board shall appoint special
3 magistrates to take testimony and make recommendations on petitions filed with the
4 Board. See Rule 12D-9.010(1), F.A.C.

5
6 Special magistrates shall be selected from a list maintained by the Board clerk of
7 qualified individuals who are willing to serve. See Rule 12D-9.010(1), F.A.C.

8
9 Regarding requirements for appointing special magistrates, Rule 12D-9.010(1), F.A.C.,
10 further states the following:

11
12 *“When appointing special magistrates, the board, board attorney, and board clerk shall*
13 *not consider any assessment reductions recommended by any special magistrate in the*
14 *current year or in any previous year.”*

15
16 Rule 12D-9.010(5)(b), F.A.C., requires that the selection of a special magistrate must:

- 17
18 1. Be based solely on the experience and qualifications of the magistrate; and
19
20 2. Not be influenced by any party, or prospective party, to a Board proceeding or by
21 any such party with an interest in the outcome of the proceeding.

22
23 When appointing special magistrates or scheduling special magistrates for specific
24 hearings, the board, board attorney, and board clerk may not consider the dollar amount
25 or percentage of any assessment reductions any special magistrate has recommended
26 in the current year or in any previous year. See Chapter 2016-128, Section 12, Laws of
27 Florida (CS/CS/HB 499).

28
29 In counties with populations of 75,000 or less, the Board shall have the option of using
30 special magistrates. See Rule 12D-9.010(2), F.A.C.

31
32 * The Department shall make available to these counties a list of qualified special
33 magistrates. See Rule 12D-9.010(2), F.A.C.

34
35 A person does not have to be a resident of the county in which he or she serves as a
36 special magistrate. See Rule 12D-9.010(3), F.A.C.

37
38 Rule 12D-9.010(4), F.A.C., states the following:

39
40 *“The special magistrate must meet the following qualifications:*

- 41
42 (a) *A special magistrate must not be an elected or appointed official or employee of the*
43 *county.*
44
45 (b) *A special magistrate must not be an elected or appointed official or employee of a*
46 *taxing jurisdiction or of the State.*

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1
2 (c) *During a tax year in which a special magistrate serves, he or she must not*
3 *represent any party before the board in any administrative review of property taxes.*

4
5 (d) *All special magistrates must meet the qualifications specified in Section 194.035,*
6 *F.S.”*

7
8 Rule 12D-9.010(4)(d)1., F.A.C., provides that a special magistrate appointed to hear
9 issues of exemptions, classifications, portability assessment difference transfers,
10 changes of ownership under section 193.155(3), F.S., changes of ownership or control
11 under section 193.1554(5) or 193.1555(5), F.S., or a qualifying improvement
12 determination under section 193.1555(5), F.S., must have met one of the following
13 requirements:

- 14
15 1. Be a member of The Florida Bar with no less than five years of experience in the
16 area of ad valorem taxation and have received the Department’s training; or
17
18 2. Be a member of The Florida Bar with no less than three years of experience in the
19 area of ad valorem taxation and have completed the Department’s training including
20 the exam.

21
22 Rule 12D-9.010(4)(d)2., F.A.C., provides that a special magistrate appointed to hear
23 petitions regarding the valuation of real estate shall be a state certified real estate
24 appraiser and must have met one of the following requirements:

- 25
26 1. Have not less than five years of real property valuation experience and have
27 received the Department’s training; or
28
29 2. Have not less than three years of real property valuation experience and have
30 completed the Department’s training including the exam.

31
32 A real property valuation special magistrate must be certified under Chapter 475, Part II,
33 F.S. See Rule 12D-9.010(4)(d)2., F.A.C.

- 34
35 1. A Florida certified residential appraiser appointed by the Board shall only hear
36 petitions on the valuation of residential real property of one to four residential units
37 and shall not hear petitions on other types of real property. See Rule 12D-
38 9.010(4)(d)2.a., F.A.C.
39
40 2. A Florida certified general appraiser appointed by the Board may hear petitions on
41 the valuation of any type of real property. See Rule 12D-9.010(4)(d)2.b., F.A.C.
42

43 Rule 12D-9.010(4)(d)3., F.A.C., provides that a special magistrate appointed to hear
44 petitions regarding the valuation of tangible personal property shall be a designated
45 member of a nationally recognized appraiser’s organization and must have met one of
46 the following requirements:

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- 1
- 2 1. Have not less than five years of experience in tangible personal property valuation
- 3 and have received the Department's training; or
- 4
- 5 2. Have not less than three years of experience in tangible personal property valuation
- 6 and have completed the Department's training including the exam.
- 7

8 All special magistrates shall receive or complete an annual training program provided by

9 the Department of Revenue, as described above. See Rule 12D-9.010(4)(d)4., F.A.C.

10

11 * Special magistrates with less than five years of experience must show that they

12 have completed the training by taking a written examination provided by the

13 Department. See Rule 12D-9.010(4)(d)4., F.A.C.

14

15 * A special magistrate must receive or complete any required training prior to holding

16 hearings. See Rule 12D-9.010(4)(d)4., F.A.C.

17

18 The Board or Board legal counsel must verify a special magistrate's qualifications

19 before appointing the special magistrate. See Rule 12D-9.010(5)(a), F.A.C.

20

21

The Role of Special Magistrates

22

23 The Florida Attorney General has recognized that:

- 24
- 25 1. A special magistrate is a quasi-judicial officer who "stands in the shoes" of the Board
- 26 in carrying out decision-making duties delegated by the Board; and
- 27
- 28 2. The official acts of the special magistrate are subject to Florida's Government-in-the-
- 29 Sunshine law in section 286.011, F.S. See Attorney General Opinion [2010-15](#).
- 30

31 Rule 12D-9.011(1), F.A.C., states the following:

32

33 *"The role of the special magistrate is to conduct hearings, take testimony and make*

34 *recommendations to the board regarding petitions filed before the board. In carrying out*

35 *these duties the special magistrate shall:*

- 36
- 37 (a) *Accurately and completely preserve all testimony, documents received, and*
- 38 *evidence admitted for consideration;*
- 39
- 40 (b) *At the request of either party, administer the oath upon the property appraiser or*
- 41 *tax collector, each petitioner and all witnesses testifying at a hearing;*
- 42
- 43 (c) *Conduct all hearings in accordance with the rules prescribed by the Department*
- 44 *and the laws of the state; and*
- 45

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1 (d) *Make recommendations to the board which shall include proposed findings of fact,*
2 *proposed conclusions of law, and the reasons for upholding or overturning the*
3 *determination of the property appraiser or tax collector. Also, see Rule 12D-9.030,*
4 *F.A.C.”*

5
6 Special magistrates must adhere to Rule 12D-9.022, F.A.C., relating to disqualification
7 or recusal. See Rule 12D-9.010(5)(b), F.A.C.

8
9 The special magistrate shall perform other duties as set out in the rules of the
10 Department and other areas of Florida law, and shall abide by all limitations on the
11 special magistrate’s authority as provided by law. See Rule 12D-9.011(2), F.A.C.

12 13 14 **The Role of the Property Appraiser**

15 The property appraiser shall assess all property located within the county each year.
16 See Section 192.011, F.S.

17
18 Each year, the property appraiser shall prepare the real property assessment roll and
19 the tangible personal property assessment roll. See Section 193.114, F.S.

20
21 Each year, the property appraiser shall prepare and deliver by first class mail to each
22 taxpayer listed on the current year’s assessment roll a notice of proposed property
23 taxes. See Section 200.069, F.S.

24
25 *“The property appraiser or a member of his or her staff shall confer with the taxpayer*
26 *regarding the correctness of the assessment.”* See Rule 12D-9.002(2), F.A.C.

27
28 The property appraiser shall make available to petitioners the blank petition form
29 adopted or approved by the Department. See section 194.011(3)(a), F.S., and Rule 12D-
30 9.015(5), F.A.C.

31
32 When the property appraiser receives the petition from the board clerk, regardless of
33 whether the petitioner initiates the evidence exchange, the property appraiser shall
34 provide to the petitioner a copy of the property record card containing information
35 relevant to the computation of the current assessment, with confidential information
36 redacted. The property appraiser shall provide such property record card to the
37 petitioner either by sending it to the petitioner or by notifying the petitioner how to obtain
38 it online. See Rule 12D-9.015(16), F.A.C.

39
40 When requested by a petitioner for purposes of filing a petition, the property appraiser
41 shall provide to the petitioner a determination of whether certain multiple, contiguous,
42 undeveloped parcels are substantially similar in nature. See Rule 12D-9.015(8), F.A.C.

43
44 Legislation enacted in 2015 added section 194.011(3)(g), F.S., to provide that an owner
45 of multiple tangible personal property accounts may file with the value adjustment board
46 a single joint petition if the property appraiser determines that the tangible personal

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1 property accounts are substantially similar in nature. See Chapter 2015-115, Section 1,
2 Laws of Florida (CS for HB 489).

3
4 When requested by a petitioner for purposes of filing a petition on behalf of association
5 members, the property appraiser shall provide to the petitioner a determination of
6 whether certain multiple real property parcels are substantially similar regarding
7 location, proximity to amenities, number of rooms, living area, and condition. See Rule
8 12D-9.015(8), F.A.C.

9
10 The property appraiser shall not provide information to taxpayers regarding Board
11 hearings or procedures, and shall not perform administrative duties for the Board. See
12 Rule 12D-9.005(2)(c), F.A.C.

13
14 The property appraiser shall not attempt to control or influence any part of the value
15 adjustment board process. See Rule 12D-9.023(1), F.A.C.

16
17 The property appraiser must not attempt to influence the selection of any special
18 magistrate. See Subsection 194.035(1), F.S., and Rule 12D-9.010(5)(b), F.A.C.

19
20 If the property appraiser communicates a reasonable belief that a Board member or
21 special magistrate has a bias, prejudice, or conflict of interest, the basis for that belief
22 shall be stated in the record of the proceeding or submitted prior to the hearing in writing
23 to the Board legal counsel. See Rule 12D-9.022(4)(a), F.A.C.

24
25 The property appraiser must avoid ex parte communication. See Rules 12D-9.017(1)(a)
26 and 12D-9.029(8)(b), F.A.C.

27
28 No later than seven (7) days before the hearing, if the property appraiser receives the
29 petitioner's documentation and if requested in writing by the petitioner, the property
30 appraiser shall:

31
32 1. Provide the petitioner with a list and summary of evidence to be presented at the
33 hearing accompanied by copies of documentation to be presented by the property
34 appraiser at the hearing;

35
36 2. *Include in the evidence list the property record card; and*

37
38 3. In calculating the seven (7) days, use calendar days and not include the day of the
39 hearing in the calculation, and count backwards from the day of the hearing. See
40 Rule 12D-9.020(2)(b), F.A.C.

41
42 After the opening of a hearing, the property appraiser shall indicate for the record his or
43 her determination of value, tax exemption, property classification, or "portability"
44 assessment difference. See Rule 12D-9.024(7), F.A.C.

45

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1 Under Subsection 194.301(1), F.S., in a hearing on just, classified use, or assessed
2 value, the property appraiser shall present evidence first. See Rule 12D-9.024(7), F.A.C.

3
4 In the Board or special magistrate hearing, the property appraiser is responsible for
5 presenting relevant and credible evidence in support of his or her determination. See
6 Rule 12D-9.025(3)(a), F.A.C.

7
8 A property appraiser shall not present undisclosed evidence that was not supplied to the
9 petitioner as required under the evidence exchange rule, Rule 12D-9.020, F.A.C. See
10 Rules 12D-9.020(7) and 12D-9.025(4)(f)2., F.A.C.

11
12 After receiving a Board or special magistrate's remand decision from the Board clerk,
13 the property appraiser shall follow the appropriate directions from the Board or special
14 magistrate and shall produce a written remand review. See Rule 12D-9.029(8)(a), F.A.C.

15
16 The property appraiser may provide data to assist the Board clerk with the notice of tax
17 impact. See Rules 12D-9.005(2)(c) and 12D-9.038(1), F.A.C.

18
19 When delivered by the Board, the property appraiser shall attach a copy of the Board's
20 certification of the assessment roll to each copy of each assessment roll prepared by
21 the property appraiser. See Rule 12D-9.037(1)(b), F.A.C.

22
23 Other responsibilities of Florida property appraisers are set forth in Florida law.

24 25 26 **The Role of the Petitioner**

27 The petitioner is responsible for completing the applicable petition form in accordance
28 with 2016 legislative amendments referenced in the following note. The updated petition
29 forms in the Form DR-486 series are available at:
30 <http://floridarevenue.com/property/Pages/Forms.aspx>

31
32 The Department has adopted rules implementing the 2016 legislation regarding who
33 may file a petition and under what conditions, and regarding who may represent a
34 taxpayer in a petition and under what conditions. The content of these rules is
35 presented where applicable in Module 3 of this training.

36
37 The petitioner is responsible for paying the appropriate filing fee if required. See Rule
38 12D-9.015(12)(b), F.A.C.

39
40 The petitioner is responsible for timely filing the petition form in accordance with the
41 requirements of Rule 12D-9.015(13), F.A.C.; or

42
43 * When a petitioner wishes to file a late-filed petition, the petitioner is responsible for
44 demonstrating in writing "good cause" that justifies the late-filed petition, in
45 accordance with Rule 12D-9.015(14), F.A.C.

46

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1 The petitioner must avoid ex parte communication as described in Rule 12D-
2 9.017(1)(a), F.A.C.

3
4 The petitioner must not influence the selection of any special magistrate. See Rule 12D-
5 9.010(5)(b), F.A.C.

6
7 For petitions other than those challenging a portability assessment difference, if the
8 petitioner does not wish to appear at the hearing but would like for the Board or special
9 magistrate to consider his or her evidence, the petitioner is responsible for indicating
10 this desire to the Board clerk and for submitting his or her evidence to the Board clerk
11 and the property appraiser before the hearing. See Rule 12D-9.024(9), F.A.C.

12
13 Other aspects of the petitioner's role in the value adjustment board process are
14 specified in Rule Chapter 12D-9, F.A.C.

15

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29

Module 3: Procedures Before the Hearing

30 **Training Module 3 addresses the following topics:**

- 31 • Avoiding Conflicts of Interest
- 32 • Organizational Meeting of the Value Adjustment Board
- 33 • Prehearing Checklist for the Value Adjustment Board
- 34 • Requirements for Petition Form and Filing Fee
- 35 • Persons Authorized to Sign and File Petitions
- 36 • [Single Joint Petition by a Condominium Association, a Cooperative Association, or a Homeowners' Association on Behalf of Association Members Who Own Units or Parcels](#)
- 37 • Procedures for Duplicate and Unauthorized Petitions
- 38 • Procedures for Late Filed Petitions
- 39 • Acknowledgment of Timely Filed Petitions
- 40 • Requirements for Filing and Service of Documents
- 41 • Prohibition of Ex Parte Communication
- 42 • Representation of the Taxpayer
- 43 • Procedures for Scheduling Hearings
- 44 • Procedures for Notifying the Parties of the Scheduled Hearing
- 45 • Procedures for Rescheduling Hearings
- Procedures for the Exchange of Evidence
- Petitions Withdrawn, Settled, or Acknowledged as Correct
- Non-Appearance and Summary Disposition of Petitions
- Legislation Affecting Certain Board Petitions

30 **Learning Objectives**

31 After completing this training module, the learner should be able to:

- 32
- 33 • Identify and avoid conflicts of interest
- 34 • Recognize the requirements for the Board organizational meeting under Rule 12D-9.013(1), F.A.C.
- 35
- 36 • Identify the components of the Board's prehearing checklist
- 37 • Select the correct components for a completed petition form
- 38 • Recognize the requirements and procedures for a late filed petition
- 39 • Identify the requirements for the filing and service of documents
- 40 • Recognize ex parte communication and its remedies
- 41 • Identify the procedures and requirements for scheduling hearings
- 42 • Select the correct elements for a notice of hearing
- 43 • Recognize the conditions for rescheduling hearings
- 44 • Recognize the procedures for the exchange of evidence
- 45 • Identify the correct procedure for handling withdrawn or settled petitions

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- 1 • Recognize the conditions for a summary disposition of a petition
- 2 • Identify the conditions under which a written decision must be produced

Avoiding Conflicts of Interest

6 Citizen members of the Board shall be appointed in a manner to avoid conflicts of
7 interest or the appearance of conflicts of interest. See Rule 12D-9.004(1)(c)4., F.A.C.

9 Legal counsel must avoid conflicts of interest or the appearance of a conflict of interest
10 in their representation of the Board. See Rule 12D-9.008(5), F.A.C.

12 During a tax year in which a special magistrate serves, he or she must not represent
13 any party before the Board in any administrative review of property taxes. See Rule 12D-
14 9.010(4)(c), F.A.C.

16 Board members and special magistrates must conduct themselves in a manner that
17 promotes and maintains a high level of public trust in the fairness of the Board process.

19 Board members and special magistrates must avoid conflicts of interest or the
20 appearance of a conflict of interest in their respective roles as a quasi-judicial hearing
21 body and quasi-judicial hearing officers.

23 The Board clerk shall perform his or her duties in a manner to avoid the appearance of
24 a conflict of interest. See Rule 12D-9.023(1), F.A.C.

26 * Hearing rooms, office space, computer systems, personnel, and other resources
27 used for any of the Board's functions shall be controlled by the Board through the
28 Board clerk. See Rule 12D-9.023(1), F.A.C.

30 * The Board clerk shall not use the resources of the property appraiser's or tax
31 collector's office and shall not allow the property appraiser or tax collector to control
32 or influence any part of the value adjustment board process. See Rule 12D-9.023(1),
33 F.A.C.

Code of Judicial Conduct and Related Information

36 The information below is intended to assist Boards, Board attorneys, and special
37 magistrates with avoiding ex parte communication and avoiding an actual or apparent
38 conflict of interest in their quasi-judicial roles in administrative reviews of assessments.

40 Given their quasi-judicial roles, Boards, Board attorneys, and special magistrates should
41 review and, where applicable, use relevant parts of the Code of Judicial Conduct as a
42 guide for their own conduct.

44 * While there is no legal requirement that Boards, Board attorneys, or special
45 magistrates adhere to the Code of Judicial Conduct, relevant parts of this code can

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1 be used to help promote a high level of public trust in the value adjustment board
2 process.

3
4 * The [Code of Judicial Conduct](#) is published on the Florida Supreme Court's website.

5
6 The Judicial Ethics Benchguide contains information on the Code of Judicial Conduct,
7 advisory opinions of the Judicial Ethics Advisory Committee, and Florida Supreme Court
8 opinions involving judicial discipline.

9
10 * Boards, Board attorneys, and special magistrates should review and consider the
11 relevant information in the [Judicial Ethics Benchguide](#).

12
13 * NOTE: As used in the Judicial Ethics Benchguide (for example, see pages xix and
14 178), the term "special magistrate" refers to those appointed by an Article V (Florida
15 Constitution) court in a judicial proceeding and does not refer to the special
16 magistrates appointed under section 194.035, F.S.

17
18 Boards, Board attorneys, and special magistrates should review and consider an
19 opinion of the Judicial Ethics Advisory Committee (JEAC) cautioning that a judge should
20 not accept as Facebook "friends" attorneys who may appear before the judge.

21
22 * This [JEAC Opinion Number 2010-06](#) was issued March 26, 2010.

23
24 Boards, Board attorneys, and special magistrates should also review and consider
25 [JEAC Opinion Number 2001-02](#) (issued February 19, 2001), which disapproved a
26 judge's participation in an email forum where issues that could be brought before the
27 judge are discussed by those who could appear before the judge.

28
29 Boards, Board attorneys, and special magistrates should also review and consider
30 Florida Attorney General Opinion [AGO 2008-65](#).

31
32 * In this opinion, the Attorney General recognized that discussions via electronic
33 bulletin boards are meetings subject to notices and public access under the
34 Sunshine Laws of this state.

35
36 The information above is not intended to impede professional networking activities that
37 do not result in ex parte communication or an actual or apparent conflict of interest by
38 Boards, Board attorneys, or special magistrates in their quasi-judicial roles.

39
40 More information on avoiding conflicts of interest is presented in Module 4 under the
41 section titled "Disqualification or Recusal of Special Magistrates or Board Members."

Organizational Meeting of the Value Adjustment Board

42
43
44 The Board shall annually hold one or more organizational meetings, at least one of
45 which shall meet the requirements of Rule 12D-9.013, F.A.C.
46

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* The Board shall hold this organizational meeting prior to the holding of Board hearings. See Rule 12D-9.013(1), F.A.C.

* The Board shall announce its tentative schedule, taking into consideration the number of petitions filed, the possible need to reschedule, and the requirement that the Board stay in session until all petitions have been heard. See Rule 12D-9.013(2), F.A.C.

The Board shall provide reasonable notice of each organizational meeting and such notice shall include the date, time, location, purpose of the meeting, and information required by Section 286.0105, F.S. See Rule 12D-9.013(1), F.A.C.

Rule 12D-9.013(1), F.A.C., requires the Board to do the following 12 items at one of its organizational meetings.

1. Introduce the members of the Board and provide contact information;
2. Introduce the Board clerk or any designee of the Board clerk and provide the Board clerk's contact information;
3. Appoint or ratify the private Board legal counsel. At the meeting at which Board legal counsel is appointed, this item shall be the first order of business;
4. Appoint or ratify special magistrates, if the Board will be using them for that year;
5. Make available to the public, special magistrates, and Board members, Rule Chapter 12D-9, F.A.C., containing the uniform rules of procedure for hearings before value adjustment boards and special magistrates (if applicable), and the associated forms that have been adopted by the Department;
6. Make available to the public, special magistrates, and Board members, Rule Chapter 12D-10, F.A.C., containing the rules applicable to the requirements for hearings and decisions;
7. Make available to the public, special magistrates and Board members the requirements of Florida's Government-in-the Sunshine/open government laws including information on where to obtain the current Government-in-the-Sunshine manual;
8. Discuss, take testimony on and adopt or ratify with any required revision or amendment any local administrative procedures and forms of the Board.
 - a) Such procedures must be ministerial in nature and not be inconsistent with governing statutes, case law, attorney general opinions, or rules of the Department.

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- 1
- 2 b) All local administrative procedures and forms of the Board or special magistrates
- 3 shall be made available to the public and shall be accessible on the Board clerk's
- 4 website, if any;
- 5
- 6 9. Discuss general information on Florida's property tax system, respective roles within
- 7 this system, taxpayer opportunities to participate in the system, and property
- 8 taxpayer rights;
- 9
- 10 10. Make available to the public, special magistrates and Board members, Rules 12D-
- 11 51.001, 51.002, 51.003, F.A.C., and Chapters 192 through 195, F.S., as reference
- 12 information containing the guidelines and statutes applicable to assessments and
- 13 assessment administration;
- 14
- 15 11. Adopt or ratify by resolution any filing fee for petitions for that year, in an amount
- 16 not to exceed \$15; and
- 17
- 18 12. For purposes of this rule, making available to the public means, in addition to
- 19 having copies at the meeting, the Board may refer to a website containing copies of
- 20 such documents.

21
22 The Board may hold additional meetings for the purpose of addressing administrative
23 matters. See Rule 12D-9.013(3), F.A.C.
24
25

Prehearing Checklist for the Value Adjustment Board

26
27 The entire text of Rule 12D-9.014, F.A.C., titled "Prehearing Checklist," is presented
28 below in italics.

29
30 *"(1) The board clerk shall not allow the holding of scheduled hearings until the board*
31 *legal counsel has verified that all requirements in Chapter 194, F.S., and department*
32 *rules, were met as follows:*

33
34 *(a) The composition of the board is as provided by law;*

35
36 *(b) Board legal counsel has been appointed as provided by law;*

37
38 *(c) Board legal counsel meets the requirements of Section 194.015, F.S.;*

39
40 *(d) No board members represent other government entities or taxpayers in any*
41 *administrative or judicial review of property taxes, and citizen members are not*
42 *members or employees of a taxing authority, during their membership on the board;*

43
44 *(e) In a county that does not use special magistrates, either all board members have*
45 *received the department's training or board legal counsel has received the department's*
46 *training;*

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1
2 *(f) The organizational meeting, as well as any other board meetings, will be or were*
3 *noticed in accordance with Section 286.011, F.S., and will be or were held in*
4 *accordance with law;*

5
6 *(g) The department's uniform value adjustment board procedures, consisting of this rule*
7 *chapter, were made available at the organizational meeting and copies were provided to*
8 *special magistrates and board members;*

9
10 *(h) The department's uniform policies and procedures manual is available on the*
11 *existing website of the board clerk, if the board clerk has a website;*

12
13 *(i) The qualifications of special magistrates were verified, including that special*
14 *magistrates received the department's training, and that special magistrates with less*
15 *than five years of required experience successfully completed the department's training*
16 *including any updated modules and an examination, and were certified;*

17
18 *(j) The selection of special magistrates was based solely on proper experience and*
19 *qualifications and neither the property appraiser nor any petitioners influenced the*
20 *selection of special magistrates. This provision does not prohibit the board from*
21 *considering any written complaint filed with respect to a special magistrate by any party*
22 *or citizen;*

23
24 *(k) The appointment and scheduling of special magistrates for hearings was done in a*
25 *manner in which the board, board attorney, and board clerk did not consider any*
26 *assessment reductions recommended by any special magistrate in the current year or*
27 *in any previous year.*

28
29 *(l) All procedures and forms of the board or special magistrate are in compliance with*
30 *Chapter 194, F.S., and this rule chapter;*

31
32 *(m) The board is otherwise in compliance with Chapter 194, F.S., and this rule chapter;*
33 *and*

34
35 *(n) Notice has been given to the chief executive officer of each municipality as provided*
36 *in Section 193.116, F.S.*

37
38 *(2) The board clerk shall notify the board legal counsel and the board chair of any action*
39 *needed to comply with subsection (1)."*

Requirements for Petition Form and Filing Fee

40
41
42 For the purpose of requesting a hearing before the Board, the Department prescribes
43 the Form DR-486 series. See Rule 12D-9.015(1)(a), F.A.C.
44
45

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1 * These forms are available on the Department's website at the following link:
2 <http://floridarevenue.com/property/Pages/Forms.aspx>

3
4 * The Department, the Board clerk, and the property appraiser or tax collector shall
5 make available to petitioners the blank petition forms adopted or approved by the
6 Department. See Rule 12D-9.015(5), F.A.C.

7
8 * Current and up-to-date petition forms must be used.
9

10 A "completed" petition is one that provides information for all the required elements that
11 are displayed on the Department's form and that is accompanied by the appropriate
12 filing fee if required. See Rules 12D-9.015(12)(b) and 12D-9.015(2), F.A.C.

13
14 Under Rule 12D-9.015(2), F.A.C., petition forms must contain the following elements so
15 that when filed with the Board clerk the form will be considered a "completed" petition as
16 indicated below:

- 17 1. Describe the property by parcel number;
- 18 2. Be sworn by the petitioner;
- 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45
3. State the approximate time anticipated by the petitioner for presenting his or her
case, which the Board clerk must consider in scheduling the hearing, and contain a
space for the petitioner to indicate dates of non-availability for scheduling purposes if
applicable;
4. Contain a space for the petitioner to indicate on the petition form that he or she does
not wish to attend the hearing but would like for the Board or special magistrate to
consider the petitioner's evidence without the petitioner attending the hearing;
5. Contain a statement that the petitioner has the right, regardless of whether the
petitioner initiates the evidence exchange, to receive from the property appraiser a
copy of the property record card containing information relevant to the computation
of the current assessment, with confidential information redacted, along with a
statement that when the property appraiser receives the petition, the property
appraiser will either send the property record card to the petitioner or notify the
petitioner how to obtain the property record card online.
6. Contain a signature field for the taxpayer to sign the petition and a checkbox for the
taxpayer to indicate that she or he has authorized a representative to receive or
access confidential taxpayer information related to the taxpayer;
- * Contain a checkbox for the taxpayer to indicate that he or she has authorized a
compensated or uncompensated representative to act on the taxpayer's behalf;

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- 1 * Contain a signature field for an authorized employee or representative to sign the
2 petition, when applicable, along with the authorized employee's or
3 representative's signed certification under penalty of perjury that he or she has
4 the taxpayer's authorization to file the petition on the taxpayer's behalf together
5 with checkboxes for professional information and spaces for license numbers;
6
- 7 * Contain a signature field for a compensated or uncompensated representative,
8 who is not an employee of the taxpayer or of an affiliated entity, and not an
9 attorney who is a member of the Florida Bar, a real estate appraiser licensed or
10 certified under Chapter 475, Part II, F.S., a real estate broker licensed under
11 Chapter 475, Part I, F.S., or a certified public accountant licensed under Chapter
12 473, F.S., for such representative to sign the petition, and contain checkboxes,
13 for a compensated representative to indicate he or she is attaching a power of
14 attorney from the taxpayer, and for an uncompensated representative to indicate
15 he or she is attaching a written authorization from the taxpayer;
16
- 17 7. Contain a space for the petitioner to indicate whether the property is four or less
18 residential units or another property type, provided the Board clerk shall accept the
19 petition even if this space is not filled in; and
20
- 21 8. Contain a statement that a tangible personal property assessment may not be
22 contested until a return required by section 193.052, F.S., is timely filed.
23

24 If the petition indicates that the taxpayer has authorized a compensated representative,
25 who is not acting as a licensed or certified professional listed in Rule 12D-9.018(3)(a),
26 F.A.C., to act on the taxpayer's behalf, at the time of filing the petition must either be
27 signed by the taxpayer or be accompanied by a power of attorney. See Rule 12D-
28 9.015(2)(g), F.A.C.
29

30 If the petition indicates that the taxpayer has authorized an uncompensated
31 representative to act on the taxpayer's behalf, at the time of filing the petition must
32 either be signed by the taxpayer or be accompanied by the taxpayer's written
33 authorization. See Rule 12D-9.015(2)(h), F.A.C.
34

35 The petition form shall provide notice to the petitioner that the person signing the
36 petition becomes the agent of the taxpayer for the purpose of serving process to obtain
37 personal jurisdiction over the taxpayer for the entire Board proceeding, including any
38 appeals to circuit court of a Board decision by the property appraiser or tax collector.
39 See Rule 12D-9.015(3), F.A.C.
40

41 The petition form shall provide notice to the petitioner of his or her right to an informal
42 conference with the property appraiser and that this conference is not a prerequisite to
43 filing a petition nor does it alter the time frame for filing a timely petition. See Rule 12D-
44 9.015(4), F.A.C.
45

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1 If the taxpayer or representative's name, address, telephone, or similar contact
2 information on the petition changes after filing the petition, the taxpayer or
3 representative shall notify the Board clerk in writing. See Rule 12D-9.015(6), F.A.C.
4

5 The Board clerk shall accept for filing any completed petition that is timely submitted on
6 a form approved by the Department, with payment if required. See Rule 12D-9.015(12)(a),
7 F.A.C.
8

9 Under Rule 12D-9.015(12)(b), F.A.C., a completed petition is one that:
10

- 11 1. Provides information for all the required elements that are displayed on the
12 Department's form;
- 13 2. Is accompanied by a power of attorney if required;
- 14 3. Is accompanied by written taxpayer authorization if required; and,
- 15 4. Is accompanied by the appropriate filing fee if required.
16

17 In accepting a petition, the Board clerk shall rely on: the licensure information provided
18 by a licensed professional representative; the power of attorney provided by an
19 authorized, compensated person; or the written taxpayer authorization provided by an
20 authorized, uncompensated person. See Rule 12D-9.015(12)(c), F.A.C.
21

22 If an incomplete petition is received, the Board clerk shall notify the petitioner and give
23 the petitioner an opportunity to complete and re-file the petition within 10 calendar days
24 from the date the notice of incomplete petition is mailed. See Rules 12D-9.007(6) and 12D-
25 9.015(12)(a), F.A.C.
26

27 * A completed petition shall be considered timely if completed and re-filed within the
28 time frame provided in the Board clerk's notice of incomplete petition. See Rule 12D-
29 9.015(12)(a), F.A.C.
30

31 Petitions related to valuation issues may be filed at any time during the taxable year but
32 must be filed on or before the 25th day following the mailing of the notice of proposed
33 property taxes. See Rule 12D-9.015(13), F.A.C.
34

35 * Filing timeframes for other types of petitions are specified in Rule 12D-9.015(13),
36 F.A.C.
37

38 To petition either a denial of a portability assessment limitation transfer or the amount of
39 the transfer, a petitioner may file, on Form DR-486PORT, a petition with the Board in
40 the county where the new homestead is located. See Rule 12D-9.028(2), F.A.C.
41

42 * This portability petition may be filed at any time during the taxable year but must be
43 filed on or before the 25th day following the mailing of the notice of proposed
44 property taxes as provided in section 194.011, F.S. See Rule 12D-9.028(2), F.A.C.
45
46

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Persons Authorized to Sign and File Petitions

The following persons may sign and file petitions with the value adjustment board. See Rule 12D-9.015(9), F.A.C.

- The taxpayer may sign and file a petition.
- An employee of the taxpayer or of an affiliated entity or a licensed or certified professional listed in paragraph 12D-9.018(3)(a), F.A.C., who the taxpayer has authorized to file a petition and represent the taxpayer and who certifies under penalty of perjury that he or she has the taxpayer's authorization to file a petition on the taxpayer's behalf and represent the taxpayer, may sign and file such a petition that is not signed by the taxpayer and that is not accompanied by the taxpayer's written authorization.
- A compensated person, who is not an employee of the taxpayer or of an affiliated entity and who is not acting as a licensed or certified professional listed in paragraph 12D-9.018(3)(a), F.A.C., may sign and file a petition on the taxpayer's behalf if the taxpayer has authorized such person by power of attorney. If the petition is not signed by the taxpayer, such person must provide a copy of the power of attorney to the board clerk at the time the petition is filed. This power of attorney is valid only for representing a single taxpayer in a single assessment year, and must identify the parcels or accounts for which the person is authorized to represent the taxpayer and must conform to the requirements of Chapter 709, Part II, F.S. A taxpayer may use a Department of Revenue form to grant the power of attorney or may use a different form provided it meets the requirements of Chapter 709, Part II, and Section 194.034(1), F.S. The Department has adopted Form DR-486POA, Power of Attorney for Representation Before the Value Adjustment Board, which is incorporated by reference in Rule 12D-16.002, F.A.C., as a form available to taxpayers for granting the power of attorney.
- An uncompensated person, who has a taxpayer's signed written authorization to represent the taxpayer, is authorized to sign and file a petition on the taxpayer's behalf if, at the time the petition is filed, such person provides a copy of the taxpayer's written authorization to the Board clerk with the petition or the taxpayer's signed written authorization is contained on the petition form. This written authorization is valid only for representing a single taxpayer in a single assessment year and must identify the parcels or accounts for which the person is authorized to represent the taxpayer. A taxpayer may use a Department of Revenue form to grant the authorization in writing or may use a different form provided it meets the requirements of Section 194.034(1), F.S. The Department has adopted Form DR-486A, Written Authorization for Representation Before the Value Adjustment Board, which is incorporated by reference in Rule 12D-16.002, F.A.C., as a form available to taxpayers for granting the written authorization.

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Single Joint Petition by a Condominium Association, a Cooperative Association, or a Homeowners' Association on Behalf of Association Members Who Own Units or Parcels

Note: Legislation enacted in 2021 amended section 194.011(3), F.S., to clarify that a condominium association, as defined in s. 718.103, a cooperative association as defined in s. 719.103, or any homeowners' association as defined in s. 723.075, with approval of its board of administration or directors, may file with the value adjustment board a single joint petition on behalf of any association members who own units or parcels of property which the property appraiser determines are substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition. Requires an association to notify its members of its intention to petition the value adjustment board and include in the notice a statement that, by not opting out of the petition, the unit or parcel owner agrees that the association shall also represent the unit or parcel owner in any related proceedings. Amendments created provisions for the association to continue to represent owners in subsequent circuit court proceedings. See Chapter 2021-209, Section 1, Laws of Florida, (HB 649), effective July 1, 2021.

Procedures for Duplicate and Unauthorized Petitions

If duplicate petitions are filed on the same property, the Board clerk shall contact the taxpayer and all petitioners to identify whether a person has the taxpayer's authorization to file a petition and represent the taxpayer, and resolve the issue in accordance with Rule Chapter 12D-9, F.A.C. See Rule 12D-9.015(11), F.A.C.

If a taxpayer notifies the Board that an unauthorized petition has been filed for the taxpayer's property, the Board may require the person who filed the petition to provide to the Board, before a hearing is held on such petition, the taxpayer's written authorization for the person to file the petition and represent the taxpayer. See Rule 12D-9.015(10)(a), F.A.C.

If the Board finds that an employee or a professional listed in paragraph 12D-9.018(3)(a), F.A.C., knowingly and willfully filed a petition not authorized by the taxpayer, the Board shall require such employee or professional to provide to the Board clerk, before any petition filed by that employee or professional is heard, the taxpayer's written authorization for the employee or professional to represent the taxpayer. This Board requirement shall extend for one year after the Board's imposition of the requirement. See Rule 12D-9.015(10)(b), F.A.C.

Procedures for Late Filed Petitions

The Board may not extend the time for filing a petition. See Rule 12D-9.015(14)(a), F.A.C.

The Board is not authorized to set and publish a deadline for late filed petitions. See Rule 12D-9.015(14)(a), F.A.C.

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1 However, the failure to meet the statutory deadline for filing a petition to the Board does
2 not prevent consideration of such a petition by the Board or special magistrate when the
3 Board or Board designee determines that:

- 4
- 5 1. The petitioner has demonstrated “good cause” justifying consideration of the petition;
6 and
7
- 8 2. The delay will not, in fact, be harmful to the performance of Board functions in the
9 taxing process. See Rule 12D-9.015(14)(a), F.A.C.

10
11 Under Rule 12D-9.015(14)(a), F.A.C., “Good cause” means the verifiable showing of
12 extraordinary circumstances, as follows:

- 13
- 14 1. Personal, family, or business crisis or emergency at a critical time or for an extended
15 period of time that would cause a reasonable person’s attention to be diverted from
16 filing; or
17
- 18 2. Physical or mental illness, infirmity, or disability that would reasonably affect the
19 petitioner’s ability to timely file; or
20
- 21 3. Miscommunication with, or misinformation received from, the Board clerk, property
22 appraiser, or their staff regarding the necessity or the proper procedure for filing that
23 would cause a reasonable person’s attention to be diverted from timely filing; or
24
- 25 4. Any other cause beyond the control of the petitioner that would prevent a reasonably
26 prudent petitioner from timely filing.
27

28 The Board clerk shall accept but not schedule for hearing a petition submitted to the
29 Board after the statutory deadline has expired. See Rule 12D-9.015(14)(b), F.A.C.

30
31 * The Board clerk shall submit the petition to the Board or Board designee for good
32 cause consideration if the petition is accompanied by a written explanation for the
33 delay in filing. See Rule 12D-9.015(14)(b), F.A.C.

34
35 * Unless scheduled together or by the same notice, the decision regarding good
36 cause for late filing of the petition must be made before a hearing is scheduled, and
37 the parties shall be notified of this decision. See Rule 12D-9.015(14)(b), F.A.C.
38

39 The Board clerk shall forward a copy of completed but untimely filed petitions to the
40 property appraiser or tax collector at the time they are received or upon the
41 determination of good cause. See Rule 12D-9.015(14)(c), F.A.C.

42
43 The Board is authorized to, but need not, require good cause hearings before good
44 cause determinations are made. See Rule 12D-9.015(14)(d), F.A.C.
45

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- 1 * The Board or a Board designee, which includes the Board legal counsel or a special
2 magistrate, shall determine whether the petitioner has demonstrated, in writing, good
3 cause justifying consideration of the petition. See Rule 12D-9.015(14)(d), F.A.C.
4
- 5 * If the Board or a Board designee determines that the petitioner has demonstrated
6 good cause, the Board clerk shall accept the petition for filing and so notify the
7 petitioner and the property appraiser or the tax collector. See Rule 12D-9.015(14)(d),
8 F.A.C.
9
- 10 * If the Board or a Board designee determines that the petitioner has not
11 demonstrated good cause, or if the petition is not accompanied by a written
12 explanation for the delay in filing, the Board clerk shall notify the petitioner and the
13 property appraiser or tax collector. See Rule 12D-9.015(14)(e), F.A.C.
14

15 A person who files a petition may timely file an action in circuit court to preserve the
16 right to proceed in circuit court (See sections 193.155(8)(l), 194.036, 194.171(2), and
17 196.151, F.S.). See Rule 12D-9.015(14)(f), F.A.C.
18
19

Acknowledgment of Timely Filed Petitions

20 The Board clerk shall accept all completed petitions, as defined by statute and Rule
21 12D-9.015(2), F.A.C. See Rule 12D-9.015(15), F.A.C.
22
23

24 Upon receipt of a completed and filed petition, the Board clerk shall provide to the
25 petitioner an acknowledgment of receipt of this petition and shall provide to the property
26 appraiser or tax collector a copy of the petition. See Rule 12D-9.015(15), F.A.C.
27

28 When the property appraiser receives the petition from the Board clerk, regardless of
29 whether the petitioner initiates the evidence exchange, the property appraiser shall
30 provide to the petitioner a copy of the property record card containing information
31 relevant to the computation of the current assessment, with confidential information
32 redacted. The property appraiser shall provide such property record card to the
33 petitioner either by sending it to the petitioner or by notifying the petitioner how to obtain
34 it online. See Rule 12D-9.015(16), F.A.C.
35

36 The Board clerk shall send the notice of hearing so that it will be received by the
37 petitioner no less than twenty-five (25) calendar days prior to the day of the scheduled
38 hearing. See Rule 12D-9.015(17), F.A.C.
39

- 40 * The Board clerk will have prima facie complied with the requirements of this section
41 if the notice was deposited in the U.S. mail thirty (30) days prior to the day of such
42 scheduled appearance. See Rule 12D-9.015(17), F.A.C.
43
44
45
46

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1 **Requirements for Filing and Service of Documents**

2 In construing these rules or any order of the Board, special magistrate, or a Board
3 designee, filing shall mean received by the Board clerk during open hours or by the
4 Board, special magistrate, or a Board designee during a meeting or hearing. See Rule
5 12D-9.016(1), F.A.C.

6
7 Any hand-delivered or mailed document received by the office of the Board clerk, after
8 close of business as determined by the Board clerk, shall be considered as filed the
9 next regular business day. See Rule 12D-9.016(2)(a), F.A.C.

10
11 If the Board clerk accepts documents filed by fax or other electronic transmission,
12 documents received on or after 11:59:59 P.M. of the day they are due shall be
13 considered as filed the next regular business day. See Rule 12D-9.016(2)(b), F.A.C.

14
15 If the Board and the Board clerk have the necessary electronic resources and no party
16 is prejudiced, any document that is required to be filed, served, provided, or made
17 available may be filed, served, provided, or made available electronically. See Rule 12D-
18 9.016(2)(c), F.A.C.

19
20 Rule 12D-9.007(10), F.A.C., requires the Board clerk to notify petitioners of the Board's
21 decisions either by first class mail or by electronic means as set forth in section
22 194.034(2) or 192.048, F.S. Section 192.048, F.S., authorizes the electronic
23 transmission of Board final decisions under certain conditions when the recipient has
24 consented in writing to receive the document electronically, and section 194.034(2),
25 F.S., provides for electronic transmission of Board decisions if the taxpayer has
26 selected the electronic option on the originally filed petition.

27
28 Any party who elects to file any document by fax or other electronic transmission shall
29 be responsible for any delay, disruption, or interruption of the electronic signals and
30 accepts the full risk that the document may not be properly filed with the Board clerk as
31 a result. See Rule 12D-9.016(4), F.A.C.

32
33 Local procedure may supersede provisions regarding the number of copies that must be
34 provided. See Rule 12D-9.016(2)(d), F.A.C.

35
36 When a party files a document with the Board, other than the petition, that party shall
37 serve copies of the document to all parties in the proceeding. See Rule 12D-9.016(3),
38 F.A.C.

39
40 Under Rule 12D-9.016(3), F.A.C., when a document is filed that does not clearly
41 indicate it has been provided to the other party, then the Board clerk, Board legal
42 counsel, Board members, and special magistrates shall:

43
44 1. Inform the filing party of the requirement to provide a copy of the document to the
45 other party; or
46

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- 1 2. Shall exercise care to ensure that a copy is provided to the other party and that no
2 ex parte communication occurs.
3
4

Prohibition of Ex Parte Communication

5 A participant shall not communicate with a Board member or the special magistrate
6 regarding the issues in the petition without:
7
8

- 9 1. The other party being present; or
10
11 2. Providing a copy of any written communication to the other party. See Rule 12D-
12 9.017(1)(a), F.A.C.
13

14 * In this context, “participant” includes the petitioner, the property appraiser, the Board
15 clerk, the special magistrate, a Board member, any other person directly or indirectly
16 interested in the proceeding, and anyone authorized to act on behalf of any party.
17

18 * This rule shall not prohibit internal communications among the Board clerk, Board,
19 special magistrates, and Board legal counsel, regarding internal operations of the
20 Board and other administrative matters. See Rule 12D-9.017(1)(b), F.A.C.
21

22 * The special magistrate is specifically authorized to communicate with the Board’s
23 legal counsel or Board clerk on legal matters or other issues regarding a petition.
24 See Rule 12D-9.017(1)(b), F.A.C.
25

26 A Board member or special magistrate shall immediately place on the record any
27 attempt by the property appraiser, tax collector, taxpayer, or taxpayer’s agent to provide
28 information or discuss issues, without the presence of the opposing party, with the
29 Board member or special magistrate regarding a petition before or after the hearing.
30 See Rule 12D-9.017(2), F.A.C.
31

32 Under Rule 12D-9.017(3), F.A.C., the Board or the special magistrate shall not consider
33 the ex parte communication unless each of the following three elements is true:
34

- 35 1. All parties have been notified about the ex parte communication;
36
37 2. No party objects to consideration of the communication; and
38
39 3. All parties have an opportunity during the hearing to cross-examine, object, or
40 otherwise address the communication.
41
42

Representation of the Taxpayer

43 A taxpayer has the right, at the taxpayer’s own expense and subject to the petition filing
44 requirements set forth in Rule Chapter 12D-9, F.A.C., to be represented before the
45 board by a person described in Rule 12D-9.018(3), F.A.C. See Rule 12D-9.018(1), F.A.C.
46

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1
2 The taxpayer's representative may present testimony and other evidence in support of
3 the petition. See Rule 12D-9.018(1), F.A.C.

4
5 The authorized individual, agent, or legal entity that signs the petition becomes the
6 agent of the taxpayer for the purpose of serving process to obtain jurisdiction over the
7 taxpayer for the entire value adjustment board proceedings, including any appeals of a
8 board decision by the property appraiser or tax collector. However, this does not
9 authorize the individual, agent, or legal entity to receive or access the taxpayer's
10 confidential information without written authorization from the taxpayer. See Rule 12D-
11 9.018(2), F.A.C.

12
13 Rule 12D-9.018(3), F.A.C., provides that, subject to petition filing requirements, a
14 taxpayer may be represented before the Board by one of the following persons:

- 15
16 1. An employee of the taxpayer or of an affiliated entity may represent the taxpayer.
- 17
18 2. One of the following professionals may represent the taxpayer:
 - 19 a. An attorney who is a member of the Florida Bar,
 - 20 b. A real estate appraiser licensed or certified under Chapter 475, Part II, F.S.,
 - 21 c. A real estate broker licensed under Chapter 475, Part I, F.S., or
 - 22 d. A certified public accountant licensed under Chapter 473, F.S.

23
24 Note: If the taxpayer has authorized an employee or professional, listed above, to file
25 a petition and represent the taxpayer and the employee or professional certifies
26 under penalty of perjury that he or she has the taxpayer's authorization to file the
27 petition on the taxpayer's behalf and represent the taxpayer, the employee or
28 professional may file a petition that is not signed by the taxpayer and that is not
29 accompanied by the taxpayer's written authorization. See Rule 12D-9.018(3)(a)3.,
30 F.A.C.

- 31
32 3. A person who provides to the board clerk at the time the petition is filed a power of
33 attorney authorizing such person to act on the taxpayer's behalf, may represent the
34 taxpayer. The power of attorney: is valid only for representing a single taxpayer in a
35 single assessment year, must identify the parcels or accounts for which the person is
36 authorized to represent the taxpayer, and must conform to the requirements of
37 Chapter 709, Part II, F.S. A taxpayer may use a Department of Revenue form to
38 grant the power of attorney or may use a different form, provided it meets the
39 requirements of Chapter 709, Part II, and Section 194.034(1), F.S. The Department
40 has adopted Form DR-486POA, titled Power of Attorney for Representation Before
41 the Value Adjustment Board, which is incorporated by reference in Rule 12D-16.002,
42 F.A.C., as a form available to taxpayers for granting the power of attorney. See Rule
43 12D-9.018(3)(b), F.A.C.

- 44
45 4. An uncompensated person who provides to the board clerk at the time the petition is
46 filed, the taxpayer's written authorization for such person to act on the taxpayer's
47 behalf, may represent the taxpayer. This written authorization is valid only for

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1 representing a single taxpayer in a single assessment year and must identify the
2 parcels or accounts for which the person is authorized to represent the taxpayer. A
3 taxpayer may use a Department of Revenue form to grant the authorization in writing
4 or may use a different form provided it meets the requirements of Section 194.034(1),
5 F.S. The Department has adopted Form DR-486A, titled Written Authorization for
6 Representation Before the Value Adjustment Board, which is incorporated by
7 reference in Rule 12D-16.002, F.A.C., as a form available to taxpayers for granting
8 the written authorization. See Rule 12D-9.018(3)(c), F.A.C.

9
10 The board clerk may require the use of an agent or representative number to facilitate
11 scheduling of hearings as long as such use is not inconsistent with this rule chapter.
12 See Rule 12D-9.018(4), F.A.C.

13 14 15 **Procedures for Scheduling Hearings**

16 The Board clerk shall prepare a schedule of appearances before the Board or special
17 magistrates based on timely filed petitions. See Rule 12D-9.019(1)(a), F.A.C.

18
19 Under Rule 12D-9.019(1)(b), F.A.C., when scheduling hearings, the Board clerk shall
20 consider the following:

- 21
22 1. The petitioner's anticipated amount of time if indicated on the petition;
- 23
24 2. The experience of the petitioner;
- 25
26 3. The complexity of the issues or the evidence to be presented;
- 27
28 4. The number of petitions/parcels to be heard at a single hearing;
- 29
30 5. The efficiency or difficulty for the petitioner of grouping multiple hearings for a single
31 petitioner on the same day; and
- 32
33 6. The likelihood of withdrawals, cancellations of hearings or failure to appear.

34
35 Upon request of a party, the Board clerk shall consult with the petitioner and the
36 property appraiser or tax collector to ensure that, within the Board clerk's judgment, an
37 adequate amount of time is provided for presenting and considering evidence. See Rule
38 12D-9.019(1)(c), F.A.C.

39
40 Rule 12D-9.019(1)(d), F.A.C., provides that, in scheduling hearings before specific
41 special magistrates, the Board, Board attorney, and Board clerk shall not consider any
42 assessment reductions recommended by any special magistrate in the current year or
43 in any previous year.

44
45 Rule 12D-9.019(1)(e), F.A.C., provides that, in those counties that use special
46 magistrates, after an attorney special magistrate has produced a recommended

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1 decision on a determination that a change of ownership under Section 193.155(3), F.S.,
2 a change of ownership or control under Section 193.1554(5) or 193.1555(5), F.S., or a
3 qualifying improvement under Section 193.1555(5), F.S., has occurred, the petition shall
4 be scheduled for a hearing before a real property valuation special magistrate for an
5 administrative review of the value(s), unless the petitioner waives administrative review
6 of the value. The clerk must notify the petitioner and property appraiser of the scheduled
7 time in the manner described in Rule 12D-9.019, F.A.C. This hearing is subject to the
8 single time reschedule for good cause as provided in this rule section. In counties that
9 do not use special magistrates, the Board may proceed directly to a valuation hearing
10 where properly noticed as provided in this rule section.

11
12 For petitions related to valuation issues, no hearing shall be scheduled prior to
13 completion by the governing body of each taxing authority of the public hearing on the
14 tentative budget and proposed millage rate. See Rule 12D-9.019(2), F.A.C.

Procedures for Notifying the Parties of the Scheduled Hearing

15
16
17 The Board clerk shall notify each petitioner of the scheduled time of appearance at the
18 hearing, and shall simultaneously notify the property appraiser or tax collector. See Rule
19 12D-9.019(1)(a), F.A.C.

20
21
22 * The Board clerk may electronically send this notification to the petitioner, if the
23 petitioner indicates on his or her petition this means of communication for receiving
24 notices, materials, and communications. See Rule 12D-9.019(1)(a), F.A.C.

25
26 The notice of hearing shall be in writing, and shall be delivered by regular or certified
27 U.S. mail or personal delivery, or in the manner requested by the petitioner on Form
28 DR-486. See Rule 12D-9.019(3)(a), F.A.C.

29
30 * The hearing notice shall be received by the petitioner no less than twenty-five (25)
31 calendar days prior to the day of the scheduled appearance at the hearing. See Rule
32 12D-9.019(3)(a), F.A.C.

33
34 The form for the notice of hearing shall meet the requirements of the Department's rules
35 and is subject to approval by the Department. See Rule 12D-9.019(3)(a), F.A.C.

36
37 * The Department provides Form DR-481 (Value Adjustment Board – Notice of
38 Hearing) as a format for the hearing notice.

39
40 * This form is available on the Department's website at the following link:
41 <http://floridarevenue.com/property/Pages/Forms.aspx>

42
43 * A current and up-to-date form must be used.

44
45 Under Rule 12D-9.019(3)(b), F.A.C., the hearing notice shall include the following
46 elements:

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- 1
- 2 1. The parcel number, account number or legal address of all properties being heard at
- 3 the scheduled hearing;
- 4
- 5 2. The type of hearing scheduled;
- 6
- 7 3. The date and time of the scheduled hearing; however, if the petition has been
- 8 scheduled to be heard within a block of time, the beginning and ending of that block
- 9 of time shall be indicated on the notice;
- 10
- 11 4. The time reserved, or instructions on how to obtain this information;
- 12
- 13 5. The location of the hearing, including the hearing room number if known, together
- 14 with Board clerk contact information including office address and telephone number,
- 15 for petitioners to request assistance in finding hearing rooms;
- 16
- 17 6. Instructions on how to obtain a list of the potential special magistrates for the type of
- 18 petition in question;
- 19
- 20 7. A statement of the petitioner's right to participate in the exchange of evidence with
- 21 the property appraiser;
- 22
- 23 8. A statement that the petitioner has the right to reschedule the hearing a single time
- 24 for good cause as defined in Section 194.032(2)(a), F.S.;
- 25
- 26 9. A statement that Section 194.032(2)(a), F.S., defines "good cause" as
- 27 circumstances beyond the control of the person seeking to reschedule the hearing
- 28 which reasonably prevent the party from having adequate representation at the
- 29 hearing;
- 30
- 31 10. Instructions on bringing copies of evidence;
- 32
- 33 11. Any information necessary to comply with federal or state disability or accessibility
- 34 acts; and
- 35
- 36 12. Information regarding where the petitioner may obtain a copy of the uniform rules
- 37 of procedure.
- 38
- 39

Procedures for Rescheduling Hearings

41 Rule 12D-9.019(4), F.A.C., provides that each party may reschedule the hearing a
42 single time for good cause by submitting a written request to the Board clerk before the
43 scheduled appearance or as soon as practicable. As used in this rule subsection, the
44 term "good cause" is defined in Section 194.032(2)(a), F.S.

45
46 Rule 12D-9.019(4) further provides the following:

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- 1
- 2 • The Board clerk shall ascertain if the opposing party has been furnished a copy of the
- 3 request, and if not, shall furnish the request to the opposing party. The Board clerk
- 4 shall promptly forward the reschedule request to the Board or a Board designee to
- 5 make a determination as to good cause; for this determination, the Board designee
- 6 includes the Board clerk, Board legal counsel, or a special magistrate.
- 7
- 8 • The Board or Board designee shall grant the hearing reschedule for any request that
- 9 qualifies under Section 194.032(2)(a), F.S. The Board or Board designee may act
- 10 upon the request based on its face and whether it meets the provisions for good
- 11 cause on its face.
- 12
- 13 • If the Board or a Board designee determines that the request does not show good
- 14 cause, the request will be denied and the Board may proceed with the hearing as
- 15 scheduled.
- 16
- 17 • If the Board or a Board designee determines that the request demonstrates good
- 18 cause, the request will be granted.
- 19
- 20 • Requests to reschedule shall be processed without delay and the processing shall be
- 21 accelerated where necessary to ensure, if possible, that the parties are provided
- 22 notice of the determination before the original hearing time.
- 23
- 24 • The Board clerk shall give prompt notice to the parties of the determination as to
- 25 good cause. Form DR-485WCN, Value Adjustment Board – Clerk’s Notice, is
- 26 designated and may be used for this purpose. Form DR-485WCN is adopted and
- 27 incorporated by reference in Rule 12D-16.002, F.A.C.
- 28
- 29 • If good cause is found, the clerk shall give immediate notice of cancellation of the
- 30 hearing and shall proceed as provided in paragraph (h).
- 31
- 32 • The clerk must receive any notice of conflict dates submitted by a party before notice
- 33 of a rescheduled hearing is sent to both parties or before expiration of any period
- 34 allowed by the clerk or Board to both parties for such submittal.
- 35
- 36 • The clerk must reschedule considering conflict dates received and should
- 37 accommodate a notice of conflict dates when any associated delay will not be
- 38 prejudicial to the Board’s performance of its functions in the taxing process.
- 39
- 40 • The Board clerk is responsible for notifying the parties of any rescheduling and will
- 41 issue a notice of hearing with the new hearing date which shall, if possible, be the
- 42 earliest date that is convenient for all parties.
- 43
- 44 • When rescheduling hearings under this rule, if the parties are unable to agree on an
- 45 earlier date, the Board clerk is authorized to schedule the hearing and send a notice
- 46 of such hearing by regular or certified U.S. mail or personal delivery, or in the manner

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1 requested by the petitioner on the petition Form DR-486, so that the notice shall be
2 received by the petitioner no less than fifteen (15) calendar days prior to the day of
3 such scheduled appearance, unless this notice is waived by both parties.
4

- 5 • The Board clerk is authorized to inquire if a party wants their evidence considered in
6 the event of their absence from the hearing.
7
- 8 • The clerk is authorized to ask the parties if they will waive the 15 days' notice for
9 rescheduled hearings; however, the parties are not required to do so.
10
- 11 • A party must not assume the request to reschedule has been granted until notified by
12 the clerk.
13

14 Rule 12D-9.019(5), F.A.C., provides that if a hearing is rescheduled by a party, the
15 Board clerk must notify the petitioner of the rescheduled time in the manner referenced
16 in Rule 12D-9.019(3), F.A.C., so that the notice shall be received no less than fifteen
17 (15) calendar days prior to the day of such rescheduled appearance, unless this notice
18 is waived by both parties.
19

20 * Form DR-485WCN is designated by the Department and may be used for giving this
21 notice.
22

23 * This form is available on the Department's website at the following link:
24 <http://floridarevenue.com/property/Pages/Forms.aspx>
25

26 * A current and up-to-date form must be used.
27

28 If a hearing is rescheduled, the deadlines for the exchange of evidence shall be
29 computed from the new hearing date, if time permits. See Rule 12D-9.019(6), F.A.C.
30

31 If a petitioner's hearing does not commence as scheduled, the Board clerk is authorized
32 to reschedule a petition. See Rule 12D-9.019(7)(a), F.A.C.
33

34 * In no event shall a petitioner be required to wait more than a reasonable time after
35 the scheduled time to be heard or, if the petition has been scheduled to be heard
36 within a block of time, after the beginning of the block of time. A reasonable time
37 must not exceed two hours. See Rule 12D-9.019(7)(b), F.A.C.
38

39 * The Board clerk is authorized to find that a reasonable time, not to exceed two
40 hours, has elapsed based on other commitments, appointments, or hearings of the
41 petitioner, lateness in the day, and other hearings waiting to be heard earlier than
42 the petitioner's hearing with the Board or special magistrate. See Rule 12D-
43 9.019(7)(b), F.A.C.
44

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- 1 * If his or her petition has not been heard within a reasonable time (not to exceed two
2 hours), the petitioner may request to be heard immediately. See Rule 12D-9.019(7)(b),
3 F.A.C.
4
- 5 * If the Board clerk finds that a reasonable time has elapsed and petitioner is not
6 heard, the Board clerk shall reschedule the petitioner's hearing. See Rule 12D-
7 9.019(7)(b), F.A.C.
8
- 9 * A rescheduling of a hearing under Rule 12D-9.019(7), F.A.C., is not a request by a
10 party to reschedule a hearing for good cause under Rule 12D-9.019(4), F.A.C. See
11 Rule 12D-9.019(7)(c), F.A.C.
12
- 13 * A petitioner is not required to wait any length of time as a prerequisite to filing an
14 action in circuit court. See Rule 12D-9.019(7)(d), F.A.C.
15

16 More information on rescheduling hearings is contained in the following section titled
17 "Procedures for the Exchange of Evidence."
18
19

Procedures for the Exchange of Evidence

20 Section 194.011(4)(a), F.S., and Rule 12D-9.020(1)(a)1., F.A.C., provide that, at least
21 fifteen (15) days before a petition hearing, the petitioner shall provide to the property
22 appraiser a list of evidence to be presented at the hearing, a summary of evidence to be
23 presented by witnesses, and copies of all documentation to be presented at the hearing.
24
25

- 26 * To calculate the fifteen (15) days, the petitioner shall use calendar days and shall
27 not include the day of the hearing in the calculation, and shall count backwards from
28 the day of the hearing. The last day of the period shall be included unless it is a
29 Saturday, Sunday, or legal holiday, in which event the period shall run until the end
30 of the next previous day that is neither a Saturday, Sunday, or legal holiday. See
31 Rule 12D-9.020(1)(a)2., F.A.C.
32
- 33 * The summary of evidence to be presented by witnesses for the petitioner shall be
34 sufficiently detailed as to reasonably inform a party of the general subject matter of
35 the witness' testimony, and the name and address of the witness. See Rule 12D-
36 9.020(5), F.A.C.
37
- 38 * However, Florida Statutes do not provide for exclusion of petitioner's evidence or
39 other penalty for a case where a petitioner does not give evidence as provided in
40 section 194.011(4)(a), F.S.
41
- 42 * Article I, Section 18, of the Florida Constitution, prohibits the imposition of any
43 penalty except as provided by law.
44
- 45 * A petitioner's noncompliance with section 194.011(4)(a), F.S., does not affect the
46 petitioner's right to receive a copy of the current property record card from the

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1 property appraiser as described in section 194.032(2)(a), F.S. See Rule 12D-
2 9.020(1)(b), F.A.C.

- 3
4 * A petitioner's noncompliance with Rule 12D-9.020(1)(a), F.A.C., does not authorize
5 a Board or special magistrate to exclude the petitioner's evidence. See Rule 12D-
6 9.020(1)(c), F.A.C.

7
8 Thus, if a petitioner does not comply with section 194.011(4)(a), F.S., the petitioner may
9 still present evidence and the Board or the special magistrate may accept such
10 evidence for consideration, unless the provisions of 194.034(1)(h), F.S., apply.

11
12 Under section 194.034(1)(h), F.S., if the property appraiser asks in writing for specific
13 evidence before the hearing in connection with a filed petition and the petitioner has this
14 evidence and knowingly refuses to provide it to the property appraiser a reasonable
15 time before the hearing, the evidence cannot be presented by the petitioner or accepted
16 for consideration by the Board or special magistrate. See Rule 12D-9.025(1)(c), F.A.C.

- 17
18 * Reasonableness shall be determined by whether the material can be reviewed,
19 investigated, and responded to or rebutted in the time frame remaining before the
20 hearing. See Rule 12D-9.020(1)(c), F.A.C.

- 21
22 * These requirements are more specifically described in Rules 12D-9.020(8) and 12D-
23 9.025(4)(a) and (f), F.A.C.

24
25 If the property appraiser receives the petitioner's documentation as described in Rule
26 12D-9.020 (1)(a), F.A.C., and if requested in writing by the petitioner, the property
27 appraiser shall, no later than seven (7) days before the hearing, provide to the petitioner
28 a list of evidence to be presented at the hearing, a summary of evidence to be
29 presented by witnesses, and copies of all documentation to be presented by the
30 property appraiser at the hearing. See Rule 12D-9.020(2)(a), F.A.C.

- 31
32 * There is no specific form or format required for the petitioner's written request. See
33 Rule 12D-9.020(2)(a), F.A.C.

- 34
35 * The property appraiser's evidence list must contain the current property record card.
36 See Rule 12D-9.020(2)(a), F.A.C.

- 37
38 * To calculate the seven (7) days, the property appraiser shall use calendar days and
39 shall not include the day of the hearing in the calculation, and shall count backwards
40 from the day of the hearing. The last day of the period so computed shall be
41 included unless it is a Saturday, Sunday, or legal holiday, in which event the period
42 shall run until the end of the next previous day which is neither a Saturday, Sunday,
43 or legal holiday. See Rule 12D-9.020(2)(b), F.A.C.

- 44
45 * The summary of evidence to be presented by witnesses for the property appraiser
46 shall be sufficiently detailed as to reasonably inform a party of the general subject

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1 matter of the witness' testimony, and the name and address of the witness. See Rule
2 12D-9.020(5), F.A.C.

3
4 If the petitioner does not provide the information to the property appraiser at least fifteen
5 (15) days prior to the hearing as described in Rule 12D-9.020(1)(a), F.A.C., the property
6 appraiser need not provide the information to the petitioner as described in Rule 12D-
7 9.020(2), F.A.C. See Rule 12D-9.020(3)(a), F.A.C.

8
9 If the property appraiser does not provide the information to the petitioner within the
10 time required by Rule 12D-9.020(2), F.A.C., the hearing shall be rescheduled to allow
11 the petitioner additional time to review the property appraiser's evidence. See Rule 12D-
12 9.020(3)(b), F.A.C.

13
14 By agreement of the parties, the evidence exchanged under Rule 12D-9.020, F.A.C.,
15 shall be delivered by regular or certified U.S. mail, personal delivery, overnight mail, fax
16 or email. See Rule 12D-9.020(4), F.A.C.

17
18 * The petitioner and property appraiser may agree to a different timing and method of
19 exchange. See Rule 12D-9.020(4), F.A.C.

20
21 * "Provided" means received by the party not later than the time frame provided in this
22 rule section. See Rule 12D-9.020(4), F.A.C.

23
24 * If either party does not designate a desired manner for receiving information in the
25 evidence exchange, the information shall be provided by U.S. mail. See Rule 12D-
26 9.020(4), F.A.C.

27
28 * The property appraiser shall provide the information at the address listed on the
29 petition form for the petitioner. See Rule 12D-9.020(4), F.A.C.

30
31 A property appraiser shall not use at a hearing evidence that was not supplied to the
32 petitioner as required. See Rule 12D-9.020(7), F.A.C.

33
34 * The remedy for such noncompliance shall be a rescheduling of the hearing to allow
35 the petitioner an opportunity to review the information of the property appraiser. See
36 Rule 12D-9.020(7), F.A.C.

37
38 No petitioner may present for consideration, nor may a Board or special magistrate
39 accept for consideration, testimony or other evidentiary materials that were specifically
40 requested of the petitioner in writing by the property appraiser in connection with a filed
41 petition, of which the petitioner had knowledge and denied to the property appraiser.
42 See Rule 12D-9.020(8), F.A.C.

43
44 * Such evidentiary materials shall be considered timely if provided to the property
45 appraiser no later than fifteen (15) days before the hearing in accordance with the
46 exchange of evidence rules in this section. See Rule 12D-9.020(8), F.A.C.

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1
2 * If provided to the property appraiser less than fifteen (15) days before the hearing,
3 such materials shall be considered timely if the Board or special magistrate
4 determines the materials were provided a reasonable time before the hearing, as
5 described in paragraph 12D-9.025(4)(f), F.A.C. See Rule 12D-9.020(8), F.A.C.

6
7 * A petitioner's ability to introduce the evidence, requested of the petitioner in writing
8 by the property appraiser, is lost if not provided to the property appraiser as
9 described in Rule 12D-9.020(8), F.A.C.

10
11 * This provision does not preclude rebuttal evidence that was not specifically
12 requested of the petitioner by the property appraiser. See Rule 12D-9.020(8), F.A.C.

13
14 As the trier of fact, the Board or special magistrate may independently rule on the
15 admissibility and use of evidence. See Rule 12D-9.020(9), F.A.C.

16
17 * If the Board or special magistrate has any questions relating to the admissibility and
18 use of evidence, the Board or special magistrate should consult with the Board legal
19 counsel. See Rule 12D-9.020(9), F.A.C.

20
21 * The basis for any ruling on admissibility of evidence must be reflected in the record.
22 See Rule 12D-9.020(9), F.A.C.

Petitions Withdrawn, Settled, or Acknowledged as Correct

23
24
25 A petitioner may withdraw a petition prior to the scheduled hearing. See Rule 12D-
26 9.021(1), F.A.C.

27
28
29 Form DR-485WI is prescribed by the Department for such purpose; however, other
30 written or electronic means may be used. See Rule 12D-9.021(1), F.A.C.

31
32 * This form is available on the Department's website at the following link:
33 <http://floridarevenue.com/property/Pages/Forms.aspx>

34
35 * If the Department's form is used, a current and up-to-date version of the form must
36 be used.

37
38 Under Rule 12D-9.021(1), F.A.C., Form DR-485WI shall indicate the reason for the
39 withdrawal as one of the following:

- 40
41 1. Petitioner agrees with the determination of the property appraiser or tax collector;
42
43 2. Petitioner and property appraiser or tax collector have reached a settlement of the
44 issues;
45

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1 3. Petitioner does not agree with the decision or assessment of the property appraiser
2 or tax collector but no longer wishes to pursue a remedy through the value
3 adjustment board process; or

4
5 4. Other specified reason.
6

7 The Board clerk shall cancel the hearing upon receiving a notice of withdrawal from the
8 petitioner and there shall be no further proceeding on the matter. See Rule 12D-9.021(2),
9 F.A.C.

10
11 If a property appraiser or tax collector agrees with a petition challenging a decision to
12 deny an exemption, classification, portability assessment difference transfer, or deferral,
13 the property appraiser or tax collector shall:

- 14
15 1. Issue the petitioner a notice granting said exemption, classification, portability
16 assessment difference transfer, or deferral; and
17
18 2. File with the Board clerk a notice that the petition was acknowledged as correct.

19
20 * The Board clerk shall cancel the hearing upon receiving the notice of
21 acknowledgment and there shall be no further proceeding on the matter
22 acknowledged as correct. See Rule 12D-9.021(3), F.A.C.
23

24 If parties do not file a notice of withdrawal or notice of acknowledgment but indicate the
25 same at the hearing, the Board or special magistrate shall so state on the hearing
26 record and shall not proceed with the hearing and shall not issue a decision. See Rule
27 12D-9.021(4), F.A.C.
28

29 * If a petition is withdrawn or acknowledged as correct under Rule 12D-9.021(1), (2),
30 or (3), F.A.C., or settlement is reached and filed by the parties, at any time before a
31 recommended decision or final Board decision is issued, the Board or special
32 magistrate need not issue such decision. See Rule 12D-9.021(4), F.A.C.
33

34 * The Board clerk shall list and report all withdrawals, settlements, acknowledgments
35 of correctness as withdrawn or settled petitions. See Rule 12D-9.021(4), F.A.C.
36

37 * Settled petitions shall include those acknowledged as correct by the property
38 appraiser or tax collector. See Rule 12D-9.021(4), F.A.C.
39

40 For all withdrawn or settled petitions, a special magistrate shall not produce a
41 recommended decision and the Board shall not produce a final decision. See Rule 12D-
42 9.021(5), F.A.C.
43
44
45
46

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1 **Non-Appearance and Summary Disposition of Petitions**

2 **NOTE:** The procedures in this training section do not apply to hearings on portability
3 that are held in the county where the previous homestead was located when that county
4 is different from the county where the new homestead is located. See Rule 12D-
5 9.028(6)(d), F.A.C.

6
7 * In such cases, the petitioner is not required to appear at the hearing in the county
8 where the previous homestead was located. See Rule 12D-9.028(6)(d), F.A.C.

9
10 * See Module 10 for information on petitions on assessment difference transfers
11 (portability).

12
13 **Except** for portability hearings as described above, when a petitioner does not appear
14 by the commencement of a scheduled hearing and the petitioner has not indicated a
15 desire to have their petition heard without their attendance and a good cause request is
16 not pending, the Board or the special magistrate shall:

- 17
18 1. Not commence or proceed with the hearing; and
19
20 2. Produce a decision or recommended decision as described below and in Rule 12D-
21 9.021(8), F.A.C. See Rule 12D-9.021(6), F.A.C.

22
23 If the petitioner makes a good cause request before the decision or recommended
24 decision is issued, the Board or Board designee shall rule on the good cause request
25 before determining that:

- 26
27 1. The decision or recommended decision should be set aside and the hearing should
28 be rescheduled; or
29
30 2. The Board or special magistrate should issue the decision or recommended
31 decision. See Rule 12D-9.021(6), F.A.C.

32
33 When a petitioner does not appear by the commencement of a scheduled hearing but a
34 good cause request is pending, the Board or Board designee shall rule on the good
35 cause request before determining that:

- 36
37 1. The hearing should be rescheduled; or
38
39 2. The Board or special magistrate should issue a decision or recommended decision.
40 See Rule 12D-9.021(7), F.A.C.

41
42 * If the Board or Board designee finds good cause for the petitioner's failure to appear,
43 the Board clerk shall reschedule the hearing. See Rule 12D-9.021(7)(a), F.A.C.

44

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1 * If the Board or Board designee does not find good cause for the petitioner's failure to
2 appear, the Board or special magistrate shall issue a decision or recommended
3 decision. See Rule 12D-9.021(7)(b), F.A.C.
4

5 Decisions issued under Rule Subsections 12D-9.021(6) or (7), F.A.C., shall not be
6 treated as withdrawn or settled petitions and shall contain:
7

- 8 1. A finding of fact that the petitioner did not appear at the hearing and did not state
9 good cause; and
- 10
- 11 2. A conclusion of law that the relief is denied and the decision is being issued in order
12 that any right the petitioner may have to bring an action in circuit court is not
13 impaired. See Rule 12D-9.021(8), F.A.C.
14
15

Legislation Affecting Certain Board Petitions

16 Chapter 2011-181, Laws of Florida, effective June 21, 2011, requires a petitioner to:
17
18

19 * Pay non-ad valorem assessments and a specified amount of the taxes before the
20 later of April 1 or the delinquency date of the year after the taxes were assessed;
21 and
22

23 * Pay a penalty if the good faith payment is grossly disproportionate to the amount of
24 tax found to be due and the taxpayer's admission was not made in good faith.
25

26 See sections 194.014, 197.162, and 197.333, F.S.
27

28 Also, this legislation requires the value adjustment board to deny the petition in writing
29 by a certain date if the required amount of taxes is not timely paid.
30

31 Chapter 2016-128, Section 9, Laws of Florida, effective July 1, 2016, changes the
32 interest rate for disputed property tax assessments from 12 percent per year to an
33 annual percentage rate equal to the bank prime loan rate as the Board of Governors of
34 the Federal Reserve System determines on July 1 of the tax year or the next business
35 day if July 1 is a Saturday, Sunday, or legal holiday. Also, each taxing authority will
36 proportionately fund interest on an overpayment related to a petition. See Section
37 194.014(2), F.S.

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Module 4: Procedures During the Hearing

Training Module 4 addresses the following topics:

- Disqualification or Recusal of Special Magistrates or Board Members
- Procedures for When One of the Parties Does Not Appear
- Procedures for Managing Time Needed for Hearings
- Procedures for Commencement of a Hearing
- General Procedures for Conducting a Hearing
- Procedures for Presentation of Evidence by the Parties
- Admissibility of Evidence
- The Higgs v. Good Case and Admissibility of Taxpayer Evidence
- Standard of Proof
- Procedures for Asking Questions During the Hearing
- Procedures for Collecting and Presenting Additional Evidence
- Procedures for Conducting a Hearing by Electronic Media

Learning Objectives

After completing this training module, the learner should be able to:

- Recognize the requirements and procedures for disqualification or recusal
- Identify and apply the procedures for when one of the parties does not appear
- Recognize and apply the procedures for managing time needed for hearings
- Identify and apply the procedures for commencement of a hearing
- Recognize and apply the general procedures for conducting a hearing
- Identify and apply the procedures for presentation of evidence by the parties
- Recognize the requirements and procedures for admissibility of evidence
- Identify the applicable standard of proof and how it applies
- Recognize and apply the procedures for asking questions during a hearing
- Identify and apply the procedures for collecting and presenting additional evidence
- Recognize the procedures for conducting a hearing by electronic media

Disqualification or Recusal of Special Magistrates or Board Members

Under Rule 12D-9.022, F.A.C., if either the petitioner or the property appraiser communicates a reasonable belief that a special magistrate does not possess the required statutory qualifications to conduct a particular proceeding, the basis for that belief shall be:

1. Included in the record of the proceeding; or
2. Submitted prior to the hearing in writing to the Board legal counsel.

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1 Upon review, if the Board or its legal counsel determines that the original special
2 magistrate does not meet the statutory requirements and qualifications, the Board or
3 legal counsel shall enter into the record an instruction to the Board clerk to reschedule
4 the petition before a different special magistrate to hear or rehear the petition without
5 considering actions that may have occurred during any previous hearing. See Rule 12D-
6 9.022(2)(a), F.A.C.

7
8 Upon review, if the Board or its legal counsel determines that the special magistrate
9 does meet the statutory requirements and qualifications:

- 10
11 1. Such determination shall be issued in writing and placed in the record, and the
12 special magistrate will conduct the hearing; or
13
14 2. If a hearing was already held, the recommended decision will be forwarded to the
15 Board in accordance with the Department's rules. See Rule 12D-9.022(2)(b), F.A.C.
16

17 Board members and special magistrates shall recuse themselves from hearing a
18 petition when they have a conflict of interest or an appearance of a conflict of interest.
19 See Rule 12D-9.022(3), F.A.C.
20

21 If either the petitioner or the property appraiser communicates a reasonable belief that a
22 Board member or special magistrate has a bias, prejudice, or conflict of interest, the
23 basis for that belief shall be:

- 24
25 1. Stated in the record of the proceeding; or
26
27 2. Submitted prior to the hearing in writing to the Board legal counsel. See Rule 12D-
28 9.022(4)(a), F.A.C.
29

30 If the Board member or special magistrate agrees with the basis stated in the record,
31 the Board member or special magistrate shall recuse himself or herself on the record.
32 See Rule 12D-9.022(4)(b), F.A.C.
33

34 * A special magistrate who recuses himself or herself shall close the hearing on the
35 record and notify the Board clerk of the recusal. See Rule 12D-9.022(4)(b), F.A.C.
36

37 * Upon a Board member's recusal, the hearing shall go forward if there is a quorum.
38 See Rule 12D-9.022(4)(b), F.A.C.
39

40 * Upon a special magistrate's recusal, or a Board member's recusal that results in a
41 quorum not being present, the Board clerk shall reschedule the hearing. See Rule
42 12D-9.022(4)(b), F.A.C.
43

44 If the Board member or special magistrate questions the need for recusal, the Board
45 member or special magistrate shall request an immediate determination on the matter
46 from the Board's legal counsel. See Rule 12D-9.022(4)(c), F.A.C.

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Upon review, if the Board legal counsel:

1. Determines that a recusal is necessary, the Board member or special magistrate shall recuse himself or herself and the Board clerk shall reschedule the hearing; or
2. Is uncertain whether recusal is necessary, the Board member or special magistrate shall recuse himself or herself and the Board clerk shall reschedule the hearing; or
3. Determines the recusal is unnecessary, the Board legal counsel shall set forth the basis upon which the request was not based on sufficient facts or reasons. See Rule 12D-9.022(4)(d), F.A.C.

In a rescheduled hearing, the Board or special magistrate shall not consider any actions that may have occurred during any previous hearing on the same petition. See Rule 12D-9.022(4)(e), F.A.C.

A rescheduling for disqualification or recusal shall not be treated as the one time rescheduling to which a petitioner has a right upon timely request under Section 194.032(2), F.S. See Rule 12D-9.022(5), F.A.C.

Procedures for When One of the Parties Does Not Appear

If the petitioner does not appear by the commencement of a scheduled hearing, the Board or special magistrate shall not commence the hearing and shall proceed under the requirements set forth in Rule 12D-9.021(6), F.A.C. (see Module 3), unless:

1. The petition is on a “portability” assessment difference transfer in which the previous homestead is the subject of the petition and is located in a county other than the county where the new homestead is located (Rule 12D-9.028(6), F.A.C., provides requirements specific to hearings on these petitions – see Module 10); or
2. The petitioner has indicated that he or she does not wish to appear at the hearing, but would like for the Board or special magistrate to consider evidence submitted by the petitioner. See Rule 12D-9.024(9)(a), F.A.C.

A petitioner who has indicated that he or she does not wish to appear at the hearing, but would like for the Board or special magistrate to consider his or her evidence, shall submit his or her evidence to the Board clerk and property appraiser before the hearing. See Rule 12D-9.024(9)(b), F.A.C.

* Then, the Board clerk shall:

1. Keep the petitioner’s evidence as part of the petition file;

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- 1 2. Notify the Board or special magistrate before or at the hearing that the petitioner
2 has indicated he or she will not appear at the hearing, but would like for the
3 Board or special magistrate to consider his or her evidence at the hearing; and
4
- 5 3. Give the evidence to the Board or special magistrate at the beginning of the
6 hearing. See Rule 12D-9.024(9)(b), F.A.C.

7

8 If the property appraiser or tax collector does not appear by the commencement of a
9 scheduled hearing, except a good cause hearing, the Board or special magistrate shall
10 state on the record that the property appraiser or tax collector did not appear at the
11 hearing. See Rule 12D-9.024(10), F.A.C.

12

13 * Then, the Board or special magistrate shall request the petitioner to state for the
14 record whether he or she wants to have the hearing rescheduled or wants to
15 proceed with the hearing without the property appraiser or tax collector. See Rule
16 12D-9.024(10), F.A.C.

17

18 * If the petitioner elects to have the hearing rescheduled, the Board clerk shall
19 reschedule the hearing. See Rule 12D-9.024(10), F.A.C.

20

21 * If the petitioner elects to proceed with the hearing without the property appraiser or
22 tax collector, the Board or special magistrate shall proceed with the hearing and
23 shall produce a decision or recommended decision. See Rule 12D-9.024(10), F.A.C.

24

25 In any hearing conducted without one of the parties present, the Board or special
26 magistrate must take into consideration the inability of the opposing party to cross-
27 examine the non-appearing party in determining the sufficiency of the evidence of the
28 non-appearing party. See Rule 12D-9.024(11), F.A.C.

Procedures for Managing Time Needed for Hearings

29

30

31 Boards and special magistrates shall adhere as closely as possible to the schedule of
32 hearings established by the Board clerk but must ensure that adequate time is allowed
33 for parties to present evidence and for the Board or special magistrate to consider the
34 admitted evidence. See Rule 12D-9.023(2), F.A.C.

35

36

37 * If the Board or special magistrate determines from the petition form that the hearing
38 has been scheduled for less time than the petitioner requested on the petition, the
39 Board or special magistrate must consider whether the hearing should be extended
40 or continued to provide additional time. See Rule 12D-9.023(2), F.A.C.

41

42 Unless a Board or special magistrate determines that additional time is necessary, the
43 Board or special magistrate shall conclude all hearings at the end of the time scheduled
44 for the hearing. See Rule 12D-9.025(8), F.A.C.

45

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1 * If a hearing is not concluded by the end of the time scheduled, the Board or special
2 magistrate shall determine the amount of additional time needed to conclude the
3 hearing. See Rule 12D-9.025(8), F.A.C.

4
5 * If the Board or special magistrate determines that the amount of additional time
6 needed to conclude the hearing would not unreasonably disrupt other hearings, the
7 Board or special magistrate is authorized to proceed with conclusion of the hearing.
8 See Rule 12D-9.025(8)(a), F.A.C.

9
10 * If the Board or special magistrate determines that the amount of additional time
11 needed to conclude the hearing would unreasonably disrupt other hearings, the
12 Board or special magistrate shall so state on the record and shall notify the Board
13 clerk to reschedule the conclusion of the hearing as provided in Rule 12D-
14 9.025(8)(b), F.A.C.

Procedures for Commencement of a Hearing

15
16
17
18 If all parties are present and the petition is not withdrawn or settled, a hearing on the
19 petition shall commence. See Rule 12D-9.024(1), F.A.C.

20
21 The hearing shall be open to the public. See Rule 12D-9.024(2), F.A.C.

22
23 Upon the request of either party, a special magistrate shall swear in all witnesses in that
24 proceeding on the record.

25
26 * Upon such request and if the witness has been sworn in during an earlier hearing, it
27 shall be sufficient for the special magistrate to remind the witness that he or she is
28 still under oath. See Rule 12D-9.024(3), F.A.C.

29
30 Before or at the start of the hearing, the Board, the Board's designee, or the special
31 magistrate shall give a short overview verbally or in writing of the rules of procedure and
32 any administrative issues necessary to conduct the hearing. See Rule 12D-9.024(4),
33 F.A.C.

34
35 Rule 12D-9.024(5), F.A.C., requires that before or at the start of the hearing, unless
36 waived by the parties, the Board or special magistrate shall make an opening statement
37 or provide a brochure or taxpayer information sheet that:

- 38
39 1. States the Board or special magistrate is an independent, impartial, and unbiased
40 hearing body or officer, as applicable;
41
42 2. States the Board or special magistrate does not work for the property appraiser or
43 tax collector, is independent of the property appraiser or tax collector, and is not
44 influenced by the property appraiser or tax collector;
45
46 3. States the hearing will be conducted in an orderly, fair, and unbiased manner;

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- 1
- 2 4. States that the law does not allow the Board or special magistrate to review any
- 3 evidence unless it is presented on the record at the hearing or presented upon
- 4 agreement of the parties while the record is open; and
- 5
- 6 5. States that the law requires the Board or special magistrate to evaluate the
- 7 relevance and credibility of the evidence in deciding the results of the petition.
- 8

9 The Board or special magistrate shall ask the parties if they have any questions
10 regarding the verbal or written overview of the procedures for the hearing. See Rule
11 12D-9.024(6), F.A.C.

12
13 * The Board or special magistrate then addresses any questions from the parties.
14
15

General Procedures for Conducting a Hearing

16 After the opening statement, and clarification of any questions with the parties, the
17 Board or special magistrate shall proceed with the hearing. See Rule 12D-9.024(7),
18 F.A.C.
19

20
21 No evidence shall be considered by the Board or special magistrate except when
22 presented and admitted during the time scheduled for the petitioner's hearing, or at a
23 time when the petitioner has been given reasonable notice. See Rule 12D-9.025(4)(a),
24 F.A.C.
25

26 Rule 12D-9.025(1), F.A.C., requires the Board or special magistrate to do the following
27 as part of administrative reviews:
28

- 29 1. Review the evidence presented by the parties;
- 30
- 31 2. Determine whether the evidence presented is admissible;
- 32
- 33 3. Admit the evidence that is admissible;
- 34
- 35 4. Identify the evidence presented to indicate that it is admitted or not admitted; and
- 36
- 37 5. Consider the admitted evidence.
- 38

39 Generally, the term "evidence" means something (including testimony, documents, and
40 tangible objects) that tends to prove or disprove the existence of a disputed fact. See
41 *Black's Law Dictionary, Eighth Edition*, page 595.
42

43 The Board or special magistrate shall receive, identify for the record, and retain all
44 exhibits presented during the hearing and send them to the Board clerk along with the
45 recommended decision or final decision. See Rule 12D-9.025(7)(a), F.A.C.
46

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1 * Upon agreement of the parties, the Board clerk is authorized to make an electronic
2 representation of evidence that is difficult to store or maintain. See Rule 12D-
3 9.025(7)(a), F.A.C.

4
5 The Board or special magistrate shall not be required to make, at any time during a
6 hearing, any oral or written finding, conclusion, decision, or reason for decision. See
7 Rule 12D-9.025(9), F.A.C.

8
9 * The Board or special magistrate has the discretion to determine whether to make
10 such determinations during a hearing or to consider the petition and evidence further
11 after the hearing and then make such determinations. See Rule 12D-9.025(9), F.A.C.

12
13 If at any point in a hearing or proceeding the petitioner withdraws the petition or the
14 parties agree to settlement, the petition becomes a withdrawn or settled petition and the
15 hearing or proceeding shall end. See Rule 12D-9.024(8), F.A.C.

16
17 * The Board or special magistrate shall state or note for the record that the petition is
18 withdrawn or settled, shall not proceed with the hearing, shall not consider the
19 petition, and shall not produce a decision or recommended decision. See Rule 12D-
20 9.024(8), F.A.C.

21
22 Representatives of interested municipalities may be heard in hearings as provided in
23 Section 193.116, F.S. See Rule 12D-9.025(7)(c), F.A.C.

Procedures for Presentation of Evidence by the Parties

24
25
26 The property appraiser shall indicate for the record his or her determination of just
27 value, assessed value, classified use value, tax exemption, property classification, or
28 "portability" assessment difference; or, if applicable, the tax collector shall indicate for
29 the record his or her determination of the deferral or penalty. See Rule 12D-9.024(7),
30 F.A.C.

31
32
33 Under section 194.301(1), F.S., in a hearing on just, classified use, or assessed value,
34 the first issue to be considered is whether the property appraiser establishes a
35 presumption of correctness for the assessment. See Rule 12D-9.024(7), F.A.C.

36
37 * The property appraiser shall present evidence on this issue first. See Rule 12D-
38 9.024(7), F.A.C.

39
40 Under Rule 12D-9.025(3)(a), F.A.C., in a Board or special magistrate hearing:

41
42 * The property appraiser or tax collector is responsible for presenting relevant and
43 credible evidence in support of his or her determination; and
44

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1 * The petitioner is responsible for presenting relevant and credible evidence in support
2 of his or her belief that the property appraiser's or tax collector's determination is
3 incorrect.

4
5 Florida Statutes do not provide for exclusion of petitioner's evidence or other penalty for
6 a case where a petitioner does not give evidence as provided in section 194.011(4)(a),
7 F.S.

8
9 * If a petitioner does not comply with section 194.011(4)(a), F.S., the petitioner may
10 still present the evidence for consideration by the Board or special magistrate.

11
12 However, if the property appraiser asks in writing for specific evidence before the
13 hearing in connection with a filed petition, and the petitioner has this evidence and
14 refuses to provide it to the property appraiser, the evidence cannot be presented by the
15 petitioner or accepted for consideration by the Board or special magistrate. See Rule
16 12D-9.025(4)(a), F.A.C.

17
18 * These requirements are more specifically described in Rule 12D-9.025(4)(f), F.A.C.,
19 as presented below.

20
21 If a party submits evidence to the Board clerk prior to the hearing, the Board or special
22 magistrate shall not review or consider such evidence prior to the hearing. See Rule
23 12D-9.025(4)(b), F.A.C.

24
25 * In order to be reviewed by the Board or special magistrate, any evidence filed with
26 the Board clerk shall be brought to the hearing by the party. See Rule 12D-
27 9.025(4)(c), F.A.C.

28
29 * However, under Rule 12D-9.025(4)(c), F.A.C., the requirement for a petitioner to
30 bring this evidence to the hearing shall not apply where:

- 31
- 32 1. A petitioner does not appear at a hearing on a "portability" assessment difference
33 transfer petition in which the previous homestead is the subject of the petition
34 and is located in a county other than the county where the new homestead is
35 located (Rule 12D-9.028(6), F.A.C., provides requirements specific to hearings
36 on these petitions – see Module 10); or
 - 37
38 2. A petitioner has indicated that he or she does not wish to appear at the hearing
39 but would like for the Board or special magistrate to consider evidence submitted
40 by the petitioner.

41
42 A petitioner who has indicated that he or she does not wish to appear at the hearing, but
43 would like for the Board or special magistrate to consider his or her evidence, shall
44 submit his or her evidence to the Board clerk before the hearing. See Rule 12D-
45 9.025(4)(d), F.A.C.

46

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1 * Under Rule 12D-9.025(4)(d), F.A.C., when this occurs, the Board clerk shall do each
2 of the following:

- 3
- 4 1. Keep the petitioner's evidence as part of the petition file;
- 5
- 6 2. Notify the Board or special magistrate before or at the hearing that the petitioner
7 has indicated he or she will not appear at the hearing, but would like for the
8 Board or special magistrate to consider his or her evidence at the hearing; and
9
- 10 3. Give the evidence to the Board or special magistrate at the beginning of the
11 hearing.
- 12

13 The Board clerk may provide an electronic system for the filing and retrieval of evidence
14 for the convenience of the parties, but such evidence shall not be considered part of the
15 record and shall not be reviewed by the Board or special magistrate until presented at a
16 hearing. See Rule 12D-9.025(4)(e), F.A.C.

17

18 * Any exchange of evidence should occur between the parties and such evidence is
19 not part of the record until presented by the offering party and deemed admissible at
20 the hearing. See Rule 12D-9.025(4)(e), F.A.C.

21

22 A property appraiser shall not present undisclosed evidence that was not supplied to the
23 petitioner as required under the evidence exchange rule (Rule 12D-9.020, F.A.C.). See
24 Rule 12D-9.025(4)(f)2., F.A.C.

25

26 * The remedy for such noncompliance shall be a rescheduling of the hearing to allow
27 the petitioner an opportunity to review the information of the property appraiser. See
28 Rule 12D-9.025(4)(f)2., F.A.C.

29

30 No petitioner shall present for consideration, nor shall the Board or special magistrate
31 accept for consideration, testimony or other evidentiary materials that were specifically
32 requested of the petitioner in writing by the property appraiser in connection with a filed
33 petition, of which the petitioner had knowledge and denied to the property appraiser.
34 See Rule 12D-9.025(4)(f)1., F.A.C.

35

36 * Under Rule 12D-9.025(4)(f)1., F.A.C., these evidentiary materials shall be
37 considered timely under either of the following two conditions:

- 38
- 39 1. If the evidentiary materials were provided to the property appraiser no later than
40 fifteen (15) days before the hearing in accordance with the exchange of evidence
41 rules in Rule 12D-9.020, F.A.C.; or
42
- 43 2. If provided to the property appraiser less than fifteen (15) days before the
44 hearing, but the Board or special magistrate determines that the evidentiary
45 materials were provided a reasonable time before the hearing.
- 46

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- 1 * For purposes of Rules 12D-9.020 and 12D-9.025, F.A.C., reasonableness shall be
2 assumed if the property appraiser does not object. See Rule 12D-9.025(4)(f)1., F.A.C.
3
- 4 * Otherwise, reasonableness shall be determined by whether the material can be
5 reviewed, investigated, and responded to or rebutted in the time frame remaining
6 before the hearing. See Rule 12D-9.025(4)(f)1., F.A.C.
7
- 8 * If a petitioner has acted in good faith and not denied evidence to the property
9 appraiser prior to the hearing, as provided by Section 194.034(1)(h), F.S., but
10 wishes to submit evidence at the hearing which is of a nature that would require
11 investigation or verification by the property appraiser, then the special magistrate
12 may allow the hearing to be recessed and, if necessary, rescheduled so that the
13 property appraiser may review such evidence. See Rule 12D-9.025(4)(f)1., F.A.C.
14
- 15 * A petitioner's ability to introduce the evidence, requested of the petitioner in writing
16 by the property appraiser, is lost if the requested evidence is not provided to the
17 property appraiser as described in Rule 12D-9.025(4)(f), F.A.C.
18
- 19 * This provision does not preclude the presentation and consideration of rebuttal
20 evidence that the property appraiser did not specifically request from the petitioner.
21 See Rule 12D-9.025(4)(f)1., F.A.C.
22

Examples of Taxpayer's Rebuttal Evidence

24 Below are three examples of a taxpayer's rebuttal evidence. These examples are
25 intended to assist Boards and special magistrates in determining, when necessary,
26 whether presented evidence qualifies as rebuttal evidence in particular cases.
27

Rebuttal Evidence: Example 1

29 The taxpayer initiates an evidence exchange with the property appraiser.
30

31 The taxpayer first provides his or her evidence to the property appraiser and the
32 property appraiser then provides his or her evidence to the taxpayer.
33

34 After reviewing the property appraiser's evidence and learning of which comparable
35 sales the property appraiser plans to present as evidence, the taxpayer sees that the
36 property appraiser did not include photographs of the comparable sale properties.
37

38 After the exchange of evidence but before the hearing, the taxpayer physically views
39 and takes photographs of each of the property appraiser's comparable sale properties
40 and, at the hearing, presents these photographs solely as rebuttal evidence.
41

42 These photographs can only be rebuttal evidence since the taxpayer had no knowledge
43 prior to the evidence exchange of which comparable sales the property appraiser
44 intended to present as evidence.
45

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1 These photographs are relevant because they show evidence of property condition
2 under subsection 193.011(6), F.S.

3

Rebuttal Evidence: Example 2

5 The taxpayer initiates an evidence exchange with the property appraiser.

6

7 The taxpayer provides his or her evidence to the property appraiser and the property
8 appraiser provides his or her evidence to the taxpayer.

9

10 After reviewing the property appraiser's evidence and learning of which comparable
11 rental properties the property appraiser plans to present as evidence, the taxpayer sees
12 that the property appraiser did not include a map showing the location of the
13 comparable rental properties relative to the location of the subject property.

14

15 After the exchange of evidence but before the hearing, the taxpayer produces a location
16 map showing the comparables and the subject property and, at the hearing, presents
17 this location map solely as rebuttal evidence.

18

19 This map can only be rebuttal evidence since the taxpayer had no knowledge prior to
20 the evidence exchange of which comparable rentals the property appraiser intended to
21 present as evidence.

22

23 The taxpayer's map is relevant because it relates to property location and income, two
24 of the eight factors under section 193.011, F.S.

25

Rebuttal Evidence: Example 3

27 The taxpayer initiates an evidence exchange with the property appraiser.

28

29 The taxpayer provides his or her evidence to the property appraiser and the property
30 appraiser provides his or her evidence to the taxpayer.

31

32 After reviewing the property appraiser's evidence, the taxpayer sees that the property
33 appraiser's evidence shows incorrect zoning for the subject property.

34

35 After the exchange of evidence but before the hearing, the taxpayer obtains
36 documentation from the local zoning authority showing the correct zoning and, at the
37 hearing, presents this documentation solely as rebuttal evidence.

38

39 This documentation can only be rebuttal evidence since the taxpayer had no knowledge
40 prior to the evidence exchange that the property appraiser's evidence contained
41 incorrect zoning information.

42

43 The taxpayer's zoning documentation is relevant because it relates to subsection
44 193.011(2), F.S.

45

46

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1 **Admissibility of Evidence**

2 In administrative reviews of assessments, the term “admitted evidence” means
3 evidence that has been admitted into the record for consideration by the Board or
4 special magistrate. See Rule 12D-9.025(2)(a), F.A.C.

5
6 Generally, “relevant evidence” is evidence that is reasonably related, directly or
7 indirectly, to the statutory criteria that apply to the issue under review. See Rule 12D-
8 9.025(2)(b), F.A.C.

9
10 * This description means the evidence meets or exceeds a minimum level of
11 relevance necessary to be admitted for consideration, but does not necessarily
12 mean that the evidence has sufficient relevance to legally justify a particular
13 conclusion. See Rule 12D-9.025(2)(b), F.A.C.

14
15 Rebuttal evidence is relevant evidence used solely to disprove or contradict the original
16 evidence presented by an opposing party. See Rule 12D-9.025(2)(c), F.A.C.

17
18 NOTE: More information on the relevance of evidence is presented in Modules 6, 8, 9,
19 and 11.

20
21 As the trier of fact, the Board or special magistrate may independently rule on the
22 admissibility and use of evidence. See Rule 12D-9.025(2)(d), F.A.C.

23
24 * If the Board or special magistrate has any questions relating to the admissibility and
25 use of evidence, the Board or special magistrate should consult with the Board legal
26 counsel. See Rule 12D-9.025(2)(d), F.A.C.

27
28 * The basis for any ruling on admissibility of evidence must be reflected in the record.
29 See Rule 12D-9.025(2)(d), F.A.C.

30
31 * The special magistrate may delay ruling on the question during the hearing and
32 consult with Board legal counsel after the hearing. See Rule 12D-9.025(2)(d), F.A.C.

33
34 The Board is a quasi-judicial body and special magistrates are quasi-judicial officers.
35 See Redford v. Department of Revenue, 478 So.2d 808 (Fla. 1985) and Subsection 195.027(3),
36 Florida Statutes. Also, see Rodriguez v. Tax Adjustment Experts of Florida, Inc., 551 So.2d 537
37 (Fla. 3d DCA 1989).

38
39 * *“Quasi-judicial proceedings are not controlled by strict rules of evidence and
40 procedure.”* See Jennings v. Dade County, 589 So.2d 1337 (Fla. 3d DCA 1991). Also, see
41 *Ehrhardt’s Florida Evidence, 2008 Edition* (Eagan, MN: Thomson West, 2008), page 5.

42
43 Board and special magistrate proceedings are not controlled by strict rules of evidence
44 and procedure. See Rule 12D-9.025(2)(a), F.A.C.

45
46 * Formal rules of evidence shall not apply, but fundamental due process shall be
47 observed and shall govern the proceedings. See Rule 12D-9.025(2)(a), F.A.C.

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1
2 Boards and special magistrates must not apply strict standards of relevance or
3 materiality in deciding whether to admit evidence into the record. Any decisions to
4 exclude evidence must not be arbitrary or unreasonable.

5
6 A bulletin from the Department regarding Board hearings and confidentiality is PTO
7 Bulletin 10-07, which is available on the Department's website at:

8
9 [Bulletin: PTO 10-07](#)

10 11 **The Higgs v. Good Case and Admissibility of Taxpayer Evidence**

12 In the past, there have been questions on whether the Florida appellate court decision
13 of Higgs v. Good, 813 So.2d 178 (Fla. 3d DCA 2002), applies in Board proceedings
14 under Chapter 194, Part I, F.S.

15
16 * The Higgs court disallowed the consideration of a taxpayer's property income data in
17 a circuit court lawsuit because the taxpayer did not provide the data when requested
18 by the property appraiser in the appraisal development process under section
19 195.027(3), F.S., and Rule 12D-1.005, F.A.C.

20
21 * For reasons described below, the appellate court's holding in Higgs case applied to
22 a judicial review in circuit court under Chapter 194, Part II, F.S., and not to a quasi-
23 judicial, administrative review under Chapter 194, Part I, F.S.

24
25 The Higgs case involved a property appraiser's request, under section 195.027(3), F.S.,
26 for financial records from the taxpayer in April of the tax year for the purpose of
27 assessment roll development.

28
29 * This request for information from the taxpayer was not made in connection with a
30 Board petition under section 194.034(1)(h), F.S.

31
32 The issue of whether necessary financial records are admissible in a Board proceeding
33 is not governed by section 195.027(3), F.S., or by Rule 12D-1.005, F.A.C., but rather is
34 governed by section 194.034(1)(h), F.S.

35
36 No statute authorizes the imposition of a penalty (exclusion of taxpayer evidence) in a
37 value adjustment board proceeding in a case where a property taxpayer does not
38 provide the financial records of non-homestead property that is referenced in section
39 195.027(3), F.S.

40
41 A state agency cannot create a penalty not authorized by statute. Section 18, Article I
42 (titled "Declaration of Rights") of the Florida Constitution states:

43
44 ***"Administrative penalties.— No administrative agency, except the***
45 ***Department of Military Affairs in an appropriately convened court-martial action***
46 ***as provided by law, shall impose a sentence of imprisonment, nor shall it***

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1 impose any other penalty except as provided by law." [underlined emphasis
2 added]

3
4 * Therefore, the Department's rules for Board proceedings cannot create a penalty
5 (exclusion of taxpayer evidence) that is not specifically authorized by statute.

6
7 * Likewise, a Board or special magistrate cannot impose a penalty that is not
8 specifically authorized by statute.

9
10 * There is no statute or rule authorizing a Board or special magistrate to order the
11 exclusion, based on the Higgs decision, of relevant and otherwise admissible
12 evidence.

13
14 The Department's rules in Chapter 12D-9, F.A.C., are part of the implementation of
15 2008 legislation from Chapter 2008-197, Laws of Florida, which directs the Department
16 to develop a uniform policies and procedures manual for use by Boards.

17
18 * Since there is no legislative authority to implement the Higgs case in rules on
19 administrative review, Chapter 12D-9, F.A.C., does not incorporate the Higgs case.

20
21 If a taxpayer complies with section 194.034(1)(h), F.S., otherwise admissible property
22 income data not provided by the taxpayer when requested during the appraisal
23 development process may still be accepted for consideration in a Board petition.

24
25 There are two statutory provisions by which a property appraiser can request relevant
26 assessment information from a property taxpayer, as described following.

27
28 1. The first of these provisions is found in section 195.027(3), F.S., which provides that
29 the property appraiser can request financial records reasonably necessary to the
30 classification or valuation of non-homestead property.

31
32 * The rule implementing this statute is 12D-1.005, F.A.C.

33
34 * This first provision applies to the process of developing property appraisals and
35 does not refer or apply to the administrative review of those appraisals.

36
37 * Section 195.027(3), F.S., contains no penalty for a case where a property
38 taxpayer does not provide such financial records when requested by the property
39 appraiser in the appraisal development process.

40
41 * The Higgs case specifically involved a request for taxpayer records under section
42 195.027(3), F.S.

43
44 2. The second of these statutory provisions is found in section 194.034(1)(h), F.S.,
45 which provides that no petitioner may present, nor may a board or special magistrate
46 accept for consideration, testimony or other evidentiary materials that were

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1 specifically requested of the petitioner in writing by the property appraiser in
2 connection with a filed petition, of which the petitioner had knowledge and denied to
3 the property appraiser.

4
5 * This second provision applies to the administrative review of assessments.

6
7 * Section 194.034(1)(h), F.S., does provide a penalty (exclusion of evidence) for a
8 case where a property taxpayer does not provide the appropriate evidence when
9 requested in writing by the property appraiser in connection with a filed Board
10 petition.

11
12 * The Higgs case did not involve the process provided in section 194.034(1)(h),
13 F.S.

14
15 Since there is a separate statutory process for requesting and exchanging evidence in
16 connection with a filed Board petition, until an appellate court or the Legislature
17 expressly applies the Higgs decision in the context of the Board's statutory process, the
18 Higgs decision does not apply in Board proceedings.

19
20 In the Higgs decision, since the court was not reviewing an administrative proceeding,
21 the court's references to administrative review are not part of the holding in the case.

22
23 * The references apparently originated from the form used by the property appraiser
24 to request necessary financial records from property owners.

25
26 * The Higgs decision's gratuitous reference to "administrative" is *obiter dictum*. See
27 Doherty v. Brown, 14 So. 3d 1266, 1267 (Fla. 1st DCA 2009), stating: "[A] purely gratuitous
28 observation or remark made in pronouncing an opinion and which concerns some rule,
29 principle, or application of law not necessarily involved in the case or essential to its
30 determination is *obiter dictum*, pure and simple."

31
32 * The case of Higgs v. Good does not apply to Board proceedings (administrative
33 reviews).

34 35 36 **Standard of Proof**

37 In administrative reviews, Boards or special magistrates must consider admitted
38 evidence and then compare the weight of the evidence to a "standard of proof" to make
39 a determination on an issue under review.

40 "Standard of proof" means the level of proof needed by the Board or special magistrate
41 to reach a particular conclusion. See Rule 12D-9.027(5), F.A.C.

42
43 Under section 194.301, F.S., "preponderance of the evidence" is the standard of proof
44 that applies in assessment challenges. See Rule 12D-9.025(3)(b), F.A.C.

45

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1 * The “clear and convincing evidence” standard of proof no longer applies, starting
2 with 2009 assessments. See Rule 12D-9.025(3)(b), F.A.C.

3
4 * A taxpayer shall never have the burden of proving that the property appraiser’s
5 assessment is not supported by any reasonable hypothesis of a legal assessment.
6 See Rule 12D-9.025(3)(b), F.A.C.
7

8 NOTE: More information on standard of proof and how to apply it in administrative
9 reviews is presented in Modules 6, 8, and 9.
10

Procedures for Asking Questions During the Hearing

11
12 When testimony is presented at a hearing, each party shall have the right to ask
13 questions of any witness. See Rule 12D-9.025(5), F.A.C.
14

15
16 The Board or special magistrate shall have the authority, at a hearing, to ask questions
17 at any time of either party, the witnesses, or Board staff. See Rule 12D-9.025(7)(b), F.A.C.
18

19 * When asking questions, the Board or special magistrate shall not show bias for or
20 against any party or witness. See Rule 12D-9.025(7)(b), F.A.C.
21

22 * The Board or special magistrate shall limit the content of any question asked of a
23 party or witness to matters reasonably related, directly or indirectly, to matters
24 already in the record. See Rule 12D-9.025(7)(b), F.A.C.
25

26 In particular, the Board or special magistrate should ask any questions that are
27 necessary to help the Board or special magistrate meet their duty of determining
28 whether applicable statutory criteria have been satisfied.
29

Procedures for Collecting and Presenting Additional Evidence

30
31 By agreement of the parties entered in the record, the Board or special magistrate may
32 leave the record open and postpone completion of the hearing to a date certain to allow
33 a party to collect and provide additional relevant and credible evidence. See Rule 12D-
34 9.025(6)(a), F.A.C.
35

36
37 * Such postponements shall be limited to instances where, after completing original
38 presentations of evidence, the parties agree to the collection and submittal of
39 additional, specific factual evidence for consideration by the Board or special
40 magistrate. See Rule 12D-9.025(6)(a), F.A.C.
41

42 * In lieu of completing the hearing, upon agreement of the parties the Board or special
43 magistrate is authorized to consider such evidence without further hearing. See Rule
44 12D-9.025(6)(a), F.A.C.
45

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1 If additional hearing time is necessary, the hearing must be completed at the date,
2 place, and time agreed upon for presenting the additional evidence to the Board or
3 special magistrate for consideration. See Rule 12D-9.025(6)(b), F.A.C.

4
5 Rule 12D-9.025(6)(c), F.A.C., provides that the following limitations shall apply if the
6 property appraiser seeks to present additional evidence that was unexpectedly
7 discovered and that would increase the assessment.

- 8
9 1. The Board or special magistrate shall ensure that such additional evidence is limited
10 to a correction of a factual error discovered in the physical attributes of the petitioned
11 property; a change in the property appraiser's judgment is not such a correction and
12 shall not justify an increase in the assessment.
- 13
14 2. A notice of revised proposed assessment shall be made and provided to the
15 petitioner in accordance with the notice provisions set out in Florida Statutes for
16 notices of proposed property taxes.
- 17
18 3. Along with the notice of revised proposed assessment, the property appraiser shall
19 provide to the petitioner a copy of the revised property record card containing
20 information relevant to the computation of the revised proposed assessment, with
21 confidential information redacted. The property appraiser shall provide such revised
22 property record card to the petitioner either by sending it to the petitioner or by
23 notifying the petitioner how to obtain it online.
- 24
25 4. A new hearing shall be scheduled and notice of the hearing shall be sent to the
26 petitioner.
- 27
28 5. The evidence exchange procedures in Rule 12D-9.020, F.A.C., shall be available.
- 29
30 6. The back assessment procedure in section 193.092, F.S., shall be used for any
31 assessment already certified.

32 33 34 **Procedures for Conducting a Hearing by Electronic Media**

35 Hearings conducted by electronic media shall occur only under the conditions set forth
36 in Rule 12D-9.026, F.A.C.

- 37
38 * Hearings conducted by electronic media are subject to Board approval and the
39 availability of the necessary equipment and procedures. See Rule 12D-9.026(1)(a),
40 F.A.C.
- 41
42 * The special magistrate, if one is used, must agree in each case to the electronic
43 hearing. See Rule 12D-9.026(1)(b), F.A.C.
- 44
45 * The Board must reasonably accommodate parties that have hardship or lack
46 necessary equipment or ability to access equipment. See Rule 12D-9.026(1)(c), F.A.C.

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- 1
2 * The Board must provide a physical location at which a party may appear, if
3 requested. See Rule 12D-9.026(1)(c), F.A.C.
4

5 For any hearing conducted by electronic media, the Board shall ensure that all
6 equipment is adequate and functional for allowing clear communication among the
7 participants and for creating the hearing records required by law.
8

- 9 * The Board procedures shall specify the time period within which a party must
10 request to appear at a hearing by electronic media. See Rule 12D-9.026(2), F.A.C.
11

12 Consistent with Board equipment and procedures:
13

- 14 * Any party may request to appear at a hearing before a Board or special magistrate,
15 using telephonic or other electronic media. See Rule 12D-9.026(3)(a), F.A.C.
16

- 17 * However, unless required by other provisions of state or federal law, the Board
18 clerk need not comply with such a request if such telephonic or electronic media
19 are not reasonably available. See Rule 12D-9.026(3)(a), F.A.C.
20

- 21 * If the Board or special magistrate allows a party to appear by telephone, all
22 members of the Board in the hearing or the special magistrate must be physically
23 present in the hearing room. See Rule 12D-9.026(3)(a), F.A.C.
24

- 25 * The parties must also all agree on the methods for swearing witnesses, presenting
26 evidence, and placing testimony on the record. Such methods must comply with the
27 provisions of this rule chapter. See Rule 12D-9.026(3)(b), F.A.C.
28

- 29 * The agreement of the parties must include which parties must appear by telephonic
30 or other electronic media and which parties will be present in the hearing room. See
31 Rule 12D-9.026(3)(b), F.A.C.
32

33 Hearings conducted by electronic media must be open to the public either by providing
34 the ability for interested members of the public to join the hearing electronically or to
35 monitor the hearing at the location of the Board or special magistrate. See Rule 12D-
36 9.026(4), F.A.C.

1
2
3 **Module 5:**
4 **Procedures After the Hearing**
5

6 **Training Module 5 addresses the following topics:**

- 7 • Procedures for Remanding Value Assessments to the Property Appraiser
8 • Procedures for Recommended Decisions by Special Magistrates
9 • Procedures for Consideration and Adoption of Recommended Decisions by Boards
10 • Procedures for Final Decisions by Boards
11 • Further Judicial Proceedings
12 • Requirements for the Record of the Hearing
13 • Requirements for Certification of Assessment Rolls
14 • Requirements for Public Notice of Findings and Results of the Board
15

16
17 **Learning Objectives**

18 After completing this training module, the learner should be able to:

- 19
20 • Identify and apply the procedures for remanding value assessments
21 • Recognize the procedures and requirements for recommended decisions
22 • Identify and apply the procedures for consideration and adoption of recommended
23 decisions
24 • Recognize the procedures and requirements for final decisions
25 • Identify and apply the requirements for the record of the hearing
26 • Recognize the requirements and procedures for certification of assessment rolls
27 • Identify the requirements for public notice of findings and results of the Board
28
29

30 **Procedures for Remanding Value Assessments to the Property**
31 **Appraiser**

32 In this training, the term “remand” means to send the assessment back to the property
33 appraiser with appropriate directions for establishing the value of the petitioned
34 property.
35

36 Rules 12D-9.029(1) and 12D-9.027(2) and (3), F.A.C., require the Board or appraiser
37 special magistrate to remand a value assessment to the property appraiser when the
38 Board or special magistrate has concluded that:
39

- 40 1. The property appraiser did not establish a presumption of correctness, or has
41 concluded that the property appraiser established a presumption of correctness that
42 is overcome, as provided in Rule 12D-9.027, F.A.C.; and
43

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1 2. The record does not contain the competent substantial evidence necessary for the
2 Board or special magistrate to establish a revised just value, classified use value, or
3 assessed value, as applicable.
4

5 An attorney special magistrate shall remand an assessment to the property appraiser
6 for a classified use valuation when the special magistrate has concluded that a property
7 classification will be granted. See Rule 12D-9.029(2), F.A.C.
8

9 In a petition heard by the Board, Rule 12D-9.029(3), F.A.C., requires the Board to
10 remand an assessment to the property appraiser for a classified use valuation when the
11 Board:
12

- 13 1. Has concluded that a property classification will be granted; and
- 14
- 15 2. Has concluded that the record does not contain the competent substantial evidence
16 necessary for the Board to establish classified use value.
17

18 For remanding an assessment to the property appraiser, the Board or special
19 magistrate shall produce a written remand decision that shall include appropriate
20 directions to the property appraiser. See Rule 12D-9.029(6), F.A.C.
21

22 Rule 12D-9.029(4), F.A.C., provides that the Board or special magistrate shall produce
23 written findings of fact and conclusions of law necessary to determine that a remand is
24 required, but shall not render a recommended or final decision until after a continuation
25 hearing is held or waived as provided in Rule 12D-9.029(9), F.A.C.
26

27 * For producing these findings and conclusions and remanding an assessment, the
28 Board or special magistrate is required to use Form DR-485R. See Rule 12D-
29 9.029(4), F.A.C.
30

31 * The Form DR-485R is available on the Department's website at the following link:
32 <http://floridarevenue.com/property/Pages/Forms.aspx>
33

34 * Boards and special magistrates are required to use current and up-to-date forms.
35

36 When an attorney special magistrate remands an assessment to the property appraiser
37 for classified use valuation, an appraiser special magistrate retains authority to produce
38 a recommended decision in accordance with law. See Rule 12D-9.029(5), F.A.C.
39

40 When an appraiser special magistrate remands an assessment to the property
41 appraiser, the special magistrate retains authority to produce a recommended decision
42 in accordance with law. See Rule 12D-9.029(5), F.A.C.
43

44 When the Board remands an assessment to the property appraiser, the Board retains
45 authority to make a final decision on the petition in accordance with law. See Rule 12D-
46 9.029(5), F.A.C.

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1
2 The Board clerk shall concurrently provide, to the petitioner and the property appraiser,
3 a copy of the written remand decision from the Board or special magistrate. See Rule
4 12D-9.029(7), F.A.C.

5
6 * The petitioner's copy of the written remand decision shall be sent by regular or
7 certified U.S. mail, or by personal delivery, or in the manner requested by the
8 taxpayer on the petition. See Rule 12D-9.029(7), F.A.C.

9
10 After receiving a Board or special magistrate's remand decision from the Board clerk,
11 the property appraiser shall follow the appropriate directions from the Board or special
12 magistrate and shall produce a written remand review. See Rule 12D-9.029(8)(a), F.A.C.

13
14 * The property appraiser or his or her staff shall not have, directly or indirectly, any ex
15 parte communication with the Board or special magistrate regarding the remanded
16 assessment. See Rule 12D-9.029(8)(b), F.A.C.

17
18 Immediately after receipt of the written remand review from the property appraiser, the
19 Board clerk shall send a copy of the written remand review to the petitioner by regular or
20 certified U.S. mail or by personal delivery, or in the manner requested by the petitioner
21 on the petition, and shall send a copy to the Board or special magistrate. See Rule 12D-
22 9.029(9)(a), F.A.C.

23
24 * The Board clerk shall retain, as part of the petition file, the property appraiser's
25 written remand review. See Rule 12D-9.029(9)(a), F.A.C.

26
27 * Together with the petitioner's copy of the written remand review, the Board clerk
28 shall send to the petitioner a copy of Rule 12D-9.029(9), F.A.C. See Rule 12D-
29 9.029(9)(a), F.A.C.

30
31 The Board clerk shall schedule a continuation hearing if the petitioner notifies the Board
32 clerk, within 25 days of the date the Board clerk sends the written remand review, that
33 the results of the property appraiser's written remand review are unacceptable to the
34 petitioner and that the petitioner requests a further hearing on the petition. See Rule
35 12D-9.029(9)(b), F.A.C.

36
37 * The Board clerk shall send the notice of hearing so that it will be received by the
38 petitioner no less than twenty-five (25) calendar days prior to the day of the
39 scheduled continuation hearing, as described in Rule 12D-9.019(3), F.A.C. See Rule
40 12D-9.029(9)(b), F.A.C.

41
42 When a petitioner does not notify the Board clerk that the results of the property
43 appraiser's written remand review are unacceptable to the petitioner and does not
44 request a continuation hearing, or if the petitioner waives a continuation hearing, the
45 Board or special magistrate shall issue a decision or recommended decision. See Rule
46 12D-9.029(9)(b), F.A.C.

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1
2 * This decision or recommended decision shall contain:

- 3
4 1. A finding of fact that the petitioner did not request a continuation hearing or
5 waived such hearing; and
6
7 2. A conclusion of law that the decision is being issued in order that any right the
8 petitioner may have to bring an action in circuit court is not impaired. See Rule
9 12D-9.029(9)(b), F.A.C.

10
11 * The petition shall be treated and listed as Board action for purposes of the notice
12 required by Rule 12D-9.038, F.A.C. See Rule 12D-9.029(9)(b), F.A.C.
13

14 At a continuation hearing, the Board or special magistrate shall receive and consider the
15 property appraiser's written remand review and additional relevant and credible
16 evidence, if any, from the parties. See Rule 12D-9.029(9)(c), F.A.C.
17

18 * Also, the Board or special magistrate may consider evidence admitted at the original
19 hearing. See Rule 12D-9.029(9)(c), F.A.C.
20

21 In those counties that use special magistrates, if an attorney special magistrate has
22 granted a property classification before the remand decision and the property appraiser
23 has produced a remand classified use value, a real property valuation special
24 magistrate shall conduct the continuation hearing. See Rule 12D-9.029(10), F.A.C.
25

26 In no case shall a Board or special magistrate remand to the property appraiser an
27 exemption, "portability" assessment difference transfer, or property classification
28 determination. See Rule 12D-9.029(11), F.A.C.
29

30 Copies of all evidence shall remain with the Board clerk and be available during the
31 remand process. See Rule 12D-9.029(12), F.A.C.
32

33 In lieu of remand, the Board or special magistrate may postpone conclusion of the
34 hearing upon agreement of the parties if the requirements of Rule 12D-9.025(6), F.A.C.,
35 are met. See Rule 12D-9.029(13), F.A.C.
36
37

Procedures for Recommended Decisions by Special Magistrates

38 For each petition not withdrawn or settled, special magistrates shall produce a written
39 recommended decision that contains findings of fact, conclusions of law, and reasons
40 for upholding or overturning the property appraiser's determination. See Rule 12D-
41 9.030(1), F.A.C.
42

43
44 The special magistrate and Board clerk shall observe the petitioner's right to be sent a
45 timely written recommended decision containing proposed findings of fact and proposed

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1 conclusions of law and reasons for upholding or overturning the determination of the
2 property appraiser. See Rule 12D-9.030(1), F.A.C.

3
4 After producing a recommended decision, the special magistrate shall provide it to the
5 Board clerk. See Rule 12D-9.030(1), F.A.C.

6
7 The Board clerk shall provide copies of the special magistrate's recommended decision
8 to the petitioner and the property appraiser as soon as practicable after receiving the
9 recommended decision. See Rule 12D-9.030(2), F.A.C.

10
11 1. If the Board clerk knows the date, time, and place at which the recommended
12 decision will be considered by the Board, the Board clerk shall include such
13 information when he or she sends the recommended decision to the petitioner and
14 the property appraiser. See Rule 12D-9.030(2)(a), F.A.C.

15
16 2. If the Board clerk does not yet know the date, time, and place at which the
17 recommended decision will be considered by the Board, the Board clerk shall
18 include information on how to find the date, time, and place of the meeting at which
19 the recommended decision will be considered by the Board. See Rule 12D-
20 9.030(2)(b), F.A.C.

21
22 Any Board or special magistrate workpapers, worksheets, notes, or other materials that
23 are made available to a party shall immediately be sent to the other party. See Rule 12D-
24 9.030(3), F.A.C.

25
26 * Any workpapers, worksheets, notes, or other materials created by the Board or
27 special magistrates during the course of hearings or during consideration of petitions
28 and evidence, that contain any material prepared in connection with official
29 business, shall be transferred to the Board clerk and retained as public records. See
30 Rule 12D-9.030(3), F.A.C.

31
32 * Boards or special magistrates using standardized workpapers, worksheets, or notes,
33 whether in electronic format or otherwise, must receive prior Department approval to
34 ensure that such standardized documents comply with the law. See Rule 12D-
35 9.030(3), F.A.C.

36
37 For the purpose of producing the recommended decisions of special magistrates, the
38 Department prescribes the Form DR-485 series, and any electronic equivalent forms
39 approved by the Department under Section 195.022, F.S. See Rule 12D-9.030(4), F.A.C.

40
41 * The Form DR-485 series is available on the Department's website at the following
42 link: <http://floridarevenue.com/property/Pages/Forms.aspx>

43
44 * Boards and special magistrates are required to use current and up-to-date forms.
45

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- 1 * Under Rule 12D-9.030(4), F.A.C., all recommended decisions of special
2 magistrates, and all forms used for the recommended decisions, must contain the
3 following required elements:
4
5 1. Findings of fact;
6
7 2. Conclusions of law; and
8
9 3. Reasons for upholding or overturning the determination of the property appraiser.

10
11 As used in this training, the terms “findings of fact” and “conclusions of law” include
12 proposed findings of fact and proposed conclusions of law produced by special
13 magistrates in their recommended decisions. See Rule 12D-9.030(5), F.A.C.

14
15 Legal advice from the Board legal counsel relating to the facts of a petition or to the
16 specific outcome of a decision, if in writing, shall be included in the record and
17 referenced within the findings of fact and conclusions of law. See Rule 12D-9.030(6),
18 F.A.C.

- 19
20 * If not in writing, this legal advice shall be documented within the findings of fact and
21 conclusions of law. See Rule 12D-9.030(6), F.A.C.

Procedures for Consideration and Adoption of Recommended Decisions by Boards

22
23
24
25
26 All recommended decisions shall comply with Sections 194.301, 194.034(2), and
27 194.035(1), F.S. See Rule 12D-9.031(1), F.A.C.

- 28
29 * A special magistrate shall not submit to the Board, and the Board shall not adopt,
30 any recommended decision that is not in compliance with Sections 194.301,
31 194.034(2), and 194.035(1), F.S. See Rule 12D-9.031(1), F.A.C.

32
33 As provided in Sections 194.034(2) and 194.035(1), F.S., the Board shall consider the
34 recommended decisions of special magistrates and may act upon the recommended
35 decisions without further hearing. See Rule 12D-9.031(2), F.A.C.

- 36
37 * If the Board holds further hearing for such consideration, the Board clerk shall send
38 notice of the hearing to the parties. See Rule 12D-9.031(2), F.A.C.

- 39
40 * Any notice of hearing shall be in the same form as specified in Rule 12D-9.019(3)(b),
41 F.A.C., but need not include items specified in subparagraphs 6. through 9. of that
42 subsection. See Rule 12D-9.031(2), F.A.C.

- 43
44 * The Board shall consider whether the recommended decisions meet the
45 requirements of Rule 12D-9.031(1), F.A.C., and may rely on Board legal counsel for
46 such determination. See Rule 12D-9.031(2), F.A.C.

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1
2 * Adoption of recommended decisions need not include a review of the underlying
3 record. See Rule 12D-9.031(2), F.A.C.
4

5 If the Board determines that a recommended decision meets the requirements of law,
6 the Board shall adopt the recommended decision. See Rule 12D-9.031(3), F.A.C.
7

8 * When a recommended decision is adopted and rendered by the Board, it becomes
9 final. See Rule 12D-9.031(3), F.A.C.
10

11 Under Rule 12D-9.031(4), F.A.C., if the Board determines that a recommended decision
12 does not comply with the requirements of law, the Board shall proceed as follows.
13

14 1. The Board shall request the advice of Board legal counsel to evaluate further action
15 and shall take the steps necessary for producing a final decision in compliance with
16 law.
17

18 2. The Board may direct a special magistrate to produce a recommended decision that
19 complies with the law based on, if necessary, a review of the entire record.
20

21 3. The Board shall retain any recommended decisions and all other records of actions
22 taken under Rule 12D-9.031, F.A.C.
23
24

Procedures for Final Decisions by Boards

25 For each petition not withdrawn or settled, the Board shall produce a written final
26 decision that contains findings of fact, conclusions of law, and reasons for upholding or
27 overturning the property appraiser's determination. See Rule 12D-9.032(1)(a), F.A.C.
28
29

30 * The Board may fulfill the requirement to produce a written final decision by adopting
31 a recommended decision of the special magistrate containing the required elements
32 and providing notice that it has done so. See Rule 12D-9.032(1)(a), F.A.C.
33

34 * The Board may adopt the special magistrate's recommended decision as the
35 decision of the Board by incorporating the recommended decision, using a postcard
36 or similar notice. See Rule 12D-9.032(1)(a), F.A.C.
37

38 * The Board shall ensure regular and timely approval of recommended decisions. See
39 Rule 12D-9.032(1)(a), F.A.C.
40

41 Legal advice from the Board legal counsel relating to the facts of a petition or to the
42 specific outcome of a decision, if in writing, shall be included in the record and
43 referenced within the findings of fact and conclusions of law. See Rule 12D-9.032(1)(b),
44 F.A.C.
45

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- 1 * If not in writing, such advice shall be documented within the findings of fact and
2 conclusions of law. See Rule 12D-9.032(1)(b), F.A.C.
3
- 4 A final decision of the Board shall state the just, assessed, taxable, and exempt value,
5 for the county both before and after Board action. See Rule 12D-9.032(2), F.A.C.
6
- 7 * Board action shall not include changes made as a result of action by the property
8 appraiser. See Rule 12D-9.032(2), F.A.C.
9
- 10 * If the property appraiser has reduced his or her value or granted an exemption,
11 property classification, or “portability” assessment difference transfer, whether before
12 or during the hearing but before Board action, the values in the “before” column shall
13 reflect the adjusted figure before Board action. See Rule 12D-9.032(2), F.A.C.
14
- 15 The Board’s final decision shall advise the taxpayer and property appraiser that further
16 proceedings in circuit court shall be as provided in Section 194.036, F.S. See Rule 12D-
17 9.032(3), F.A.C.
18
- 19 Upon issuance of a final decision by the Board, the Board shall provide it to the Board
20 clerk and the Board clerk shall promptly provide notice of the final decision to the
21 parties. See Rule 12D-9.032(4), F.A.C.
22
- 23 * Notice of the final decision may be made by providing a copy of the decision. See
24 Rule 12D-9.032(4), F.A.C.
25
- 26 * The Board shall issue all final decisions within 20 calendar days of the last day the
27 Board is in session pursuant to Section 194.034, F.S. See Rule 12D-9.032(4), F.A.C.
28
- 29 * Notification of the petitioner must be by first class mail or by electronic means as set
30 forth in section 194.034(2) or section 192.048, F.S. See Rule 12D-9.007(10), F.A.C.
31
- 32 For the purpose of producing the final decisions of the Board, the Department
33 prescribes the Form DR-485 series, and any electronic equivalent forms approved by
34 the Department under Section 195.022, F.S. See Rule 12D-9.032(5), F.A.C.
35
- 36 * The Form DR-485 series is available on the Department’s website at the following
37 link: <http://floridarevenue.com/property/Pages/Forms.aspx>
38
- 39 * Boards and special magistrates are required to use current and up-to-date forms.
40
- 41 * The Form DR-485 series, or approved electronic equivalent forms, are the only
42 forms that shall be used for producing a final decision of the Board. See Rule 12D-
43 9.032(5), F.A.C.
44

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- 1 * Before using any form to notify petitioners of the final decision, the Board shall
2 submit the proposed form to the Department for approval. See Rule 12D-9.032(5),
3 F.A.C.
4
- 5 * The Board shall not use a form to notify the petitioner unless the Department has
6 approved the form. See Rule 12D-9.032(5), F.A.C.
7
- 8 * Under Rule 12D-9.032(5), F.A.C., all decisions of the Board, and all forms used to
9 produce final decisions on petitions heard by the Board, must contain the following
10 required elements:
11
- 12 1. Findings of fact;
 - 13
 - 14 2. Conclusions of law; and
 - 15
 - 16 3. Reasons for upholding or overturning the determination of the property appraiser.
17
- 18 If, prior to a final decision, any communication is received from a party concerning a
19 Board process on a petition or concerning a recommended decision, a copy of the
20 communication shall promptly be furnished to all parties, the Board clerk, and the Board
21 legal counsel. See Rule 12D-9.032(6)(a), F.A.C.
22
- 23 * No such communication shall be furnished to the Board or a special magistrate
24 unless a copy is immediately furnished to all parties. See Rule 12D-9.032(6)(a), F.A.C.
25
- 26 * A party may waive notification or furnishing of copies under Rule 12D-9.032(6)(a),
27 F.A.C.
28
- 29 * The Board legal counsel shall respond to such communication and may advise the
30 Board concerning any action the Board should take concerning the communication.
31 See Rule 12D-9.032(6)(b), F.A.C.
32
- 33 * No reconsideration of a recommended decision shall take place until all parties have
34 been furnished all communications and have been afforded adequate opportunity to
35 respond. See Rule 12D-9.032(6)(c), F.A.C.
36
- 37 * Under Rule 12D-9.032(6)(d), F.A.C., the Board clerk shall provide to the parties:
38
- 39 1. Notification before the presentation of the matter to the Board; and
 - 40
 - 41 2. Notification of any action taken by the Board.
42
 - 43

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1 **Further Judicial Proceedings**

2 Rule 12D-9.033, F.A.C., provides that after the Board issues its final decision, further
3 proceedings and the timing thereof are as provided in Sections 194.036 and 194.171,
4 F.S.

5
6

7 **Requirements for the Record of the Hearing**

8 Rule 12D-9.034(1), F.A.C., states the following:

9

10 *“The board clerk shall maintain a record of the proceeding. The record shall consist of:*

11

12 1. *The petition;*

13

14 2. *All filed documents, including all tangible exhibits and documentary evidence*
15 *presented, whether or not admitted into evidence; and*

16

17 3. *Meeting minutes and a verbatim record of the hearing.”*

18

19 The verbatim record of the hearing may be kept by any electronic means that is easily
20 retrieved and copied. See Rule 12D-9.034(2), F.A.C.

21

22 In counties that use special magistrates, the special magistrate shall accurately and
23 completely preserve the verbatim record during the hearing, and may be assisted by the
24 Board clerk. See Rule 12D-9.034(2), F.A.C.

25

26 In counties that do not use special magistrates, the Board clerk shall accurately and
27 completely preserve the verbatim record during the hearing. See Rule 12D-9.034(2),
28 F.A.C.

29

30 At the conclusion of each hearing, the Board clerk shall retain the verbatim record as
31 part of the petition file. See Rule 12D-9.034(2), F.A.C.

32

33 Under Rule 12D-9.034(3) and (4), F.A.C., the Board clerk shall maintain the petition
34 record as follows:

35

36 1. For four years after the Board rendered the final decision, if no appeal is filed in
37 circuit court; or

38

39 2. For five years if an appeal is filed in circuit court; or

40

41 3. If requested by one of the parties, these records shall be retained until the final
42 disposition of any subsequent judicial proceeding related to the same property.

43

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1 **Requirements for Certification of Assessment Rolls**

2 When the tax rolls have been extended pursuant to Section 197.323, F.S., the initial
3 certification of the Board shall be made on Form DR-488P. See Rule 12D-9.037(1)(a),
4 F.A.C.

5
6 * Form DR-488P is available on the Department's website at the following link:
7 <http://floridarevenue.com/property/Pages/Forms.aspx>
8

9 * Boards are required to use current and up-to-date forms.

10
11 After all hearings have been held, the Board shall certify an assessment roll or part of
12 an assessment roll that has been finally approved pursuant to Section 193.1142, F.S.
13 See Rule 12D-9.037(1)(b), F.A.C.

14
15 * The certification shall be on Form DR-488 prescribed by the Department for this
16 purpose. See Rule 12D-9.037(1)(b), F.A.C.

17
18 * A sufficient number of copies of the Board's certification shall be delivered to the
19 property appraiser who shall attach the same to each copy of each assessment roll
20 prepared by the property appraiser. See Rule 12D-9.037(1)(b), F.A.C.

21
22 Rule 12D-9.037(2), F.A.C., requires a certification signed by the Board chair, on behalf
23 of the entire Board, on Form DR-488, designated for this purpose, that all requirements
24 in Chapter 194, F.S., and Department rules, were met as listed below.

- 25
26 1. The prehearing checklist pursuant to Rule 12D-9.014, F.A.C., was followed and all
27 necessary actions reported by the Board clerk were taken to comply with Rule 12D-
28 9.014, F.A.C.;
- 29
30 2. The qualifications of special magistrates were verified, including whether special
31 magistrates completed the Department's training;
- 32
33 3. The selection of special magistrates was based solely on proper qualifications and
34 the property appraiser and parties did not influence the selection of special
35 magistrates;
- 36
37 4. All petitions considered were either timely filed, or good cause was found for late
38 filing after proper review by the Board or its designee;
- 39
40 5. All Board meetings were duly noticed pursuant to Section 286.011, F.S., and were
41 held in accordance with law;
- 42
43 6. No ex parte communications were considered unless all parties were notified and
44 allowed to rebut;
- 45

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- 1 7. All petitions were reviewed and considered as required by law unless withdrawn or
2 settled as defined in Rule Chapter 12D-9, F.A.C.;
- 3
- 4 8. All decisions contain required findings of fact and conclusions of law in compliance
5 with Chapter 194, F.S., and Rule Chapter 12D-9, F.A.C.;
- 6
- 7 9. The Board allowed opportunity for public comment at the meeting at which special
8 magistrate recommended decisions were considered and adopted;
- 9
- 10 10. All Board members and the Board's legal counsel have read this certification and a
11 copy of the statement in Rule 12D-9.037(1), F.A.C., is attached; and
- 12
- 13 11. All complaints of noncompliance with Part I, Chapter 194, F.S., or Rule Chapter
14 12D-9, F.A.C., that were called to the Board's attention have been appropriately
15 addressed to conform with the provisions of Part I, Chapter 194, F.S., and Rule
16 Chapter 12D-9, F.A.C.
- 17

18 The Board shall provide a signed original of the certification required under Rule 12D-
19 9.037, F.A.C., to the Department before publication of the notice of the findings and
20 results of the Board required by Section 194.037, F.S. See Rule 12D-9.037(3), F.A.C.

21

22 * See Form DR-529, Notice Tax Impact of Value Adjustment Board.

23

24 * This form is available on the Department's website at the following link:
25 <http://floridarevenue.com/property/Pages/Forms.aspx>

26

27 * Boards are required to use current and up-to-date forms.

28

29

30 **Requirements for Public Notice of Findings and Results of the Board**

31 After all hearings have been completed, the Board clerk shall publish a public notice
32 advising all taxpayers of the findings and results of the Board decisions, which shall
33 include changes made by the Board to the property appraiser's initial roll. See Rule 12D-
34 9.038(1), F.A.C.

35

36 * The format of the tax impact notice shall be substantially as prescribed in Form DR-
37 529, Notice Tax Impact of Value Adjustment Board. See Rule 12D-9.038(1), F.A.C.

38

39 * The public notice shall be in the form of a newspaper advertisement and shall be
40 referred to as the "tax impact notice." See Rule 12D-9.038(1), F.A.C.

41

42 * Such notice shall be published to permit filing within the timeframe in Rules 12D-
43 17.004(1) and (2), F.A.C., where provided. See Rule 12D-9.038(1), F.A.C.

44

45 * For petitioned parcels, the property appraiser's initial roll shall be the property
46 appraiser's determinations as presented at the commencement of the hearing or as

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- 1 reduced by the property appraiser during the hearing but before a decision by the
2 Board or a recommended decision by a special magistrate. See Rule 12D-9.038(1),
3 F.A.C.
4
- 5 * Rule 12D-9.038, F.A.C., shall not prevent the property appraiser from providing data
6 to assist the Board clerk with the notice of tax impact.
7
- 8 The notice of the findings and results of the Board shall be published in a newspaper of
9 paid general circulation within the county. See Rule 12D-9.038(3), F.A.C.
10
- 11 * It shall be the specific intent of the publication of notice to reach the largest segment
12 of the total county population. See Rule 12D-9.038(3), F.A.C.
13
- 14 * Any newspaper of less than general circulation in the county shall not be considered
15 for publication except to supplement notices published in a paper of general
16 circulation. See Rule 12D-9.038(3), F.A.C.

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Module 6: Administrative Reviews of Real Property Just Valuations

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32
33

Training Module 6 addresses the following topics:

- Statutory Law Beginning in 2009 (See HB 521)
- Standard of Proof for Administrative Reviews
- Scope of Authority for Administrative Reviews
- Legal Limitations on Administrative Reviews
- The Florida Real Property Appraisal Guidelines
- Florida Information on Appraisal Development
- The Eight Factors of Just Valuation in Section 193.011, F.S.
- The Seven Overarching Standards for Valid Just Valuations
- Petitioner Not Required to Present Opinion or Estimate of Value
- Presentation of Evidence by the Parties
- Evaluation of Evidence by the Board or Special Magistrate
- Sufficiency of Evidence
- Requirements for Establishing a Presumption of Correctness
- Requirements for Overcoming a Presumption of Correctness
- Establishing a Revised Just Value or Remanding the Assessment
- Competent Substantial Evidence for Establishing a Revised Just Value
- Establishment of Revised Just Values in Administrative Reviews
- Sequence of General Procedural Steps
- Chronological Overview of Subsection 193.011(8), F.S.
- Operation of the Eighth Criterion Under Florida Law
- The Eighth Criterion in Real Property Administrative Reviews

34
35
36
37
38
39
40

Learning Objectives

After completing this training module, the learner should be able to:

- Identify the 2009 changes enacted in statutory law (HB 521)
- Distinguish between who does appraisal development and who does NOT
- Identify legal provisions on the Florida Real Property Appraisal Guidelines
- Identify legal provisions that represent limitations on the discretion of property appraisers
- Recognize the four components of the definition of personal property
- Distinguish between appraisal development and administrative reviews

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- 1 • Identify the effective date of administrative review and the real property interest to be
- 2 reviewed
- 3 • Recognize and apply the scope of authority for administrative reviews
- 4 • Identify the items that a Board or special magistrate may consider in addition to
- 5 admitted evidence
- 6 • Identify the eight factors of just valuation in Section 193.011, F.S.
- 7 • Recognize the legal standards for consideration of the just valuation factors
- 8 • Identify the applicable standard of proof, its definition, and how it is applied
- 9 • Identify standards of proof that do NOT apply in administrative reviews
- 10 • Recognize that a petitioner is NOT required to present an opinion of value
- 11 • Understand the order of presentation of evidence
- 12 • Identify and apply the steps for evaluating evidence in administrative reviews
- 13 • Recognize and apply the provisions for ruling on the admissibility of evidence
- 14 • Identify and apply the definitions of relevant evidence and credible evidence
- 15 • Recognize and apply the standards for determining the sufficiency of evidence
- 16 • Identify types of information that are NOT sufficient evidence for establishing a
- 17 presumption of correctness
- 18 • Recognize the requirements for establishing a presumption of correctness
- 19 • Recognize the requirements for overcoming a presumption of correctness
- 20 • Identify the alternative actions required when a presumption of correctness was not
- 21 established, or was established but later was overcome
- 22 • Identify and apply the elements of the definition of competent substantial evidence
- 23 for establishing a revised assessment
- 24 • Recognize the conditions under which a Board or special magistrate is required to
- 25 establish a revised just value
- 26 • Identify legal limitations on administrative reviews
- 27 • Apply the sequence of general procedural steps for administrative reviews of just
- 28 valuations
- 29 • Identify when the Board or special magistrate is required or is NOT required to make
- 30 determinations such as findings, conclusions, or decisions
- 31 • Recognize the chronology and operation of the eighth criterion for real property
- 32 under Florida law
- 33 • Recognize that the eighth criterion must be properly considered in administrative
- 34 reviews of just valuations of real property, regardless of the appraisal approach or
- 35 technique used and whether an actual sale of the property has occurred
- 36 • Apply procedures for properly considering the eighth criterion in administrative
- 37 reviews of real property
- 38
- 39

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1 **Statutory Law Beginning in 2009 (See HB 521)**

2 An important change to Florida Statutes was passed in the 2009 legislative session and
3 then approved by the Governor on June 4, 2009. See Section 194.301, Florida
4 Statutes, as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

5
6 The complete text of this legislation is presented following:

7
8 *Be It Enacted by the Legislature of the State of Florida:*

9 10 Section 1.

11 *Section 194.301, Florida Statutes, is amended to read:*

12 *194.301 Challenge to ad valorem tax assessment.—*

13
14 *(1) In any administrative or judicial action in which a taxpayer challenges an ad valorem*
15 *tax assessment of value, the property appraiser's assessment is presumed correct if the*
16 *appraiser proves by a preponderance of the evidence that the assessment was arrived*
17 *at by complying with s. 193.011, any other applicable statutory requirements relating to*
18 *classified use values or assessment caps, and professionally accepted appraisal*
19 *practices, including mass appraisal standards, if appropriate. However, a taxpayer who*
20 *challenges an assessment is entitled to a determination by the value adjustment board*
21 *or court of the appropriateness of the appraisal methodology used in making the*
22 *assessment. The value of property must be determined by an appraisal methodology that*
23 *complies with the criteria of s. 193.011 and professionally accepted appraisal practices.*
24 *The provisions of this subsection preempt any prior case law that is inconsistent with this*
25 *subsection.*

26
27 *(2) In an administrative or judicial action in which an ad valorem tax assessment is*
28 *challenged, the burden of proof is on the party initiating the challenge.*

29
30 *(a) If the challenge is to the assessed value of the property, the party initiating the*
31 *challenge has the burden of proving by a preponderance of the evidence that the*
32 *assessed value:*

33
34 *1. Does not represent the just value of the property after taking into account any*
35 *applicable limits on annual increases in the value of the property;*

36
37 *2. Does not represent the classified use value or fractional value of the property if the*
38 *property is required to be assessed based on its character or use; or*

39
40 *3. Is arbitrarily based on appraisal practices that are different from the appraisal practices*
41 *generally applied by the property appraiser to comparable property within the same*
42 *county.*

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1
2 *(b) If the party challenging the assessment satisfies the requirements of paragraph (a),*
3 *the presumption provided in subsection (1) is overcome and the value adjustment board*
4 *or the court shall establish the assessment if there is competent, substantial evidence of*
5 *value in the record which cumulatively meets the criteria of s. 193.011 and professionally*
6 *accepted appraisal practices. If the record lacks such evidence, the matter must be*
7 *remanded to the property appraiser with appropriate directions from the value adjustment*
8 *board or the court, and the property appraiser must comply with those directions.*

9
10 *(c) If the revised assessment following remand is challenged, the procedures described*
11 *in this section apply.*

12
13 *(d) If the challenge is to the classification or exemption status of the property, there is no*
14 *presumption of correctness and the party initiating the challenge has the burden of*
15 *proving by a preponderance of the evidence that the classification or exempt status*
16 *assigned to the property is incorrect.*

17 18 Section 2.

19 *(1) It is the express intent of the Legislature that a taxpayer shall never have the burden*
20 *of proving that the property appraiser's assessment is not supported by any reasonable*
21 *hypothesis of a legal assessment. All cases establishing the every-reasonable-*
22 *hypothesis standard were expressly rejected by the Legislature on the adoption of chapter*
23 *97-85, Laws of Florida. It is the further intent of the Legislature that any cases published*
24 *since 1997 citing the every-reasonable-hypothesis standard are expressly rejected to the*
25 *extent that they are interpretative of legislative intent.*

26
27 *(2) This section is intended to clarify existing law and apply retroactively.*

28 29 Section 3.

30 *This act shall take effect upon becoming a law and shall first apply to assessments in*
31 *2009.*

32 *Approved by the Governor June 4, 2009.*

33 *Filed in Office Secretary of State June 4, 2009.*

34 *Ch. 2009-121 LAWS OF FLORIDA Ch. 2009-121*

35
36 This law applies to the administrative review of assessments beginning with 2009
37 assessments.

38
39 * Procedural steps for implementing this legislation for administrative reviews of just
40 valuations are presented later in this training module.

41

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1 Board attorneys and special magistrates are responsible for ensuring that this important
2 legislation is implemented for all administrative reviews of assessments.

3
4 This 2009 legislation lowered the standard of proof for assessment challenges, greatly
5 increased the level of diligence for developing and reporting just valuations, and added
6 the following four new determinative standards for developing, reporting, and reviewing
7 just valuations: 1) compliance with professionally accepted appraisal practices; 2)
8 avoidance of arbitrarily different appraisal practices within groups of comparable
9 property within the same county; 3) avoidance of superseded case law; and 4) correct
10 application of an appropriate appraisal methodology. These changes are explained in a
11 following section titled "The Seven Overarching Standards for Valid Just Valuations."
12

13 The law now provides a lower standard of proof, called "preponderance of the
14 evidence," for determining whether the assessment is incorrect.

15
16 * "Preponderance of the evidence" is a standard (level) of proof that means "greater
17 weight of the evidence" or "more likely than not."
18

19 In determining whether the assessment is incorrect, Boards and special magistrates
20 must not use any standard of proof other than the preponderance of the evidence
21 standard, as provided in Section 194.301, F.S., as amended by Chapter 2009-121,
22 Laws of Florida (House Bill 521).
23

24 Higher standards of proof no longer apply. The higher standard of proof called "clear
25 and convincing evidence" no longer applies in the administrative review of assessments
26 and must not be used by Boards or special magistrates. See Section 194.301, F.S., as
27 amended by Chapter 2009-121, Laws of Florida (House Bill 521).
28

29 *"It is the express intent of the Legislature that a taxpayer shall never have the burden of*
30 *proving that the property appraiser's assessment is not supported by any reasonable*
31 *hypothesis of a legal assessment."* See Subsection 194.3015(1), F.S., as created by Chapter
32 2009-121, Laws of Florida (House Bill 521).
33
34

Standard of Proof for Administrative Reviews

35 In administrative reviews, Boards or special magistrates must consider admitted
36 evidence and then compare the weight of the evidence to a "standard of proof" to make
37 a determination on an issue under review.
38

39
40 Generally, the term "evidence" means something (including testimony, documents, and
41 tangible objects) that tends to prove or disprove the existence of a disputed fact. See
42 *Black's Law Dictionary, Eighth Edition, page 595.*

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1
2 “Standard of proof” means the level of proof needed by the Board or special magistrate
3 to reach a particular conclusion. See Rule 12D-9.027(5), F.A.C.

4
5 The standard of proof that applies in administrative reviews is called “preponderance of
6 the evidence,” which means “greater weight of the evidence.” See Rule 12D-9.027(5),
7 F.A.C.

8
9 Also, the Florida Supreme Court has defined “preponderance of the evidence” as
10 “greater weight of the evidence” or evidence that “more likely than not” tends to prove a
11 certain proposition. See Gross v. Lyons, 763 So.2d 276 (Fla. 2000).

12
13 “Greater weight of the evidence” means the more persuasive and convincing force and
14 effect of the entire evidence in the case. See Florida Standard Civil Jury Instructions,
15 approved for publication by the Florida Supreme Court.

16
17 The Board or special magistrate must determine whether the admitted evidence is
18 sufficiently relevant and credible to reach the “preponderance of the evidence” standard
19 of proof.

20
21 This standard of proof is the scale by which the Board or special magistrate measures
22 the weight (relevance and credibility) of the admitted evidence in making a
23 determination.

Scope of Authority for Administrative Reviews

24
25
26 The administrative review of just valuations is performed by Boards or special
27 magistrates under Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10, and
28 12D-16, F.A.C.; and other provisions of Florida law.

29
30
31 The administrative review process performed by Boards and special magistrates is
32 separate and different from the mass appraisal development process performed by
33 property appraisers.

34
35 In administrative reviews, Boards and special magistrates are not authorized to perform
36 appraisal development and must not perform appraisal development.

37
38 In administrative reviews, Boards and special magistrates are not authorized to perform
39 any independent factual research into attributes of the subject property or any other
40 property.

41

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1 Boards and special magistrates must follow the provisions of law on the administrative
2 review of assessments. See Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10,
3 and 12D-16, F.A.C.; and other provisions of Florida law.

4
5 In establishing revised just values when required by law, Boards and special
6 magistrates are bound by the same standards and practices as property appraisers.
7 See Rule 12D-10.003(1), F.A.C., treated favorably in Bystrom v. Equitable Life Assurance
8 Society, 416 So.2d 1133 (Fla. 3d DCA 1982), and see Section 194.301, F.S., as amended by
9 Chapter 2009-121, Laws of Florida (House Bill 521).

10
11 * However, when observing this requirement, Boards and special magistrates must
12 act within their scope of authority.

13
14 The effective date of administrative review is January 1 each year, and the real property
15 interest to be reviewed is the unencumbered fee simple estate.

16
17 The Board or special magistrate has no authority to develop original just valuations of
18 property and may not take the place of the property appraiser, but shall revise the
19 assessment when required under Florida law. See Rule 12D-10.003(1), F.A.C., and Section
20 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

21
22 * See Simpson v. Merrill, 234 So.2d 350 (Fla. 1970), stating that a court may not take the place
23 of the property appraiser but may reduce the assessment.

24
25 * Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding
26 that the determination of the weight to be accorded evidence rests upon the trial judge, as
27 trier of facts, and if competent substantial evidence is introduced demonstrating the
28 assessment to be erroneous, the judge may reduce that assessment.

29
30 The Board or special magistrate is required to revise the assessment under the
31 conditions specified in Section 194.301, F.S., as amended by Chapter 2009-121, Laws
32 of Florida (House Bill 521). These conditions are described in detail later in this module.

33
34 *"In establishing a revised just value, the board or special magistrate is not restricted to*
35 *any specific value offered by one of the parties."* See Rule 12D-9.027(2)(b)3.a., F.A.C.

36
37 * Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding
38 that the reviewing judge could arrive at a value that was different from either of the values
39 presented by the parties when the judge's value was based on competent substantial evidence
40 in the record.

41

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1 The Board or special magistrate is authorized to make calculations and to make an
2 adjustment to the property appraiser's value based on competent substantial evidence
3 of just value in the record. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws
4 of Florida (House Bill 521), and see Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977),
5 stating that when the record contains competent substantial evidence of value the court may
6 make necessary value calculations or adjustments based on such evidence.

7
8 If the hearing record does not contain competent substantial evidence of just value, the
9 Board or special magistrate cannot substitute its own independent judgment. See Section
10 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see
11 Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977), stating that in the absence of
12 competent substantial evidence of value the court cannot substitute its own independent
13 judgment.

14
15 The Board or special magistrate has no authority to adjust assessments across-the-
16 board. Their authority to review just valuations is limited to the review of individual
17 petitions filed. See Spooner v. Askew, 345 So.2d 1055 (Fla. 1976).

18
19 The Board has the limited function of reviewing and correcting individual assessments
20 developed by the property appraiser. See Bath Club, Inc. v. Dade County, 394 So.2d 110
21 (Fla. 1981).

22
23 The Board has no authority to review, on its own volition, a decision of the property
24 appraiser to deny an exemption. See Redford v. Department of Revenue, 478 So.2d 808
25 (Fla. 1985).

26
27 *"For the purposes of review of a petition, the board may consider assessments among*
28 *comparable properties within homogeneous areas or neighborhoods."* See Subsection
29 194.034(5), F.S.

30
31 In administrative reviews, Boards and special magistrates are not authorized to consider
32 any evidence except evidence properly presented by the parties and properly admitted
33 into the record for consideration. See Rule 12D-9.025(4)(a), F.A.C.

34
35 In addition to admitted evidence, Boards and special magistrates are authorized to
36 consider only the following items in administrative reviews:

- 37
38 1. Legal advice from the Board legal counsel;
39
40 2. Information contained or referenced in the Department's Uniform Policies and
41 Procedures Manual and Accompanying Documents;
42

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- 1 3. Information contained or referenced in the Department's training for value
2 adjustment boards and special magistrates; and
3
- 4 4. Professional texts that pertain only to professionally accepted appraisal practices
5 that are not inconsistent with Florida law.
6
7

8 **Legal Limitations on Administrative Reviews**

9 No evidence shall be considered by the Board or special magistrate except when
10 presented during the time scheduled for the petitioner's hearing or at a time when the
11 petitioner has been given reasonable notice. See Subsection 194.034(1)(g), F.S. Also, see
12 Rule 12D-9.025(4)(a), F.A.C.
13

14 Other provisions of law address the responsibilities of petitioners and property
15 appraisers that may affect the review and consideration of evidence at a hearing.
16

- 17 * The Board or special magistrate must consult with the Board legal counsel on any
18 questions about the review and consideration of evidence.
19

20 In administrative reviews, the Board or special magistrate shall not consider the tax
21 consequences of the valuation of a specific property. See Rule 12D-10.003(1), F.A.C.
22

23 The Board or special magistrate has no power to grant relief by adjusting the value of a
24 property on the basis of hardship of a particular taxpayer. See Rule 12D-10.003(1), F.A.C.
25

26 A just valuation challenge must stand or fall on its own validity, unconnected with the
27 just value of any prior or subsequent year. See Keith Investments, Inc. v. James, 220 So.2d
28 695 (Fla. 4th DCA 1969); Also, see Dade County v. Tropical Park, Inc., 251 So.2d 551 (Fla. 3rd
29 DCA 1971).
30

31 The prior year's just value is not competent evidence of just value in the current year,
32 even when there is no evidence showing a change in circumstances between the two
33 dates of assessment. See Simpson v. Merrill, 234 So.2d 350 (Fla. 1970).
34

35 An appraisal report shall not be submitted as evidence in a value adjustment board
36 proceeding in any tax year in which the person who performed the appraisal serves as a
37 special magistrate to that county value adjustment board for the same tax year.

38 Accordingly, in that tax year the board and any special magistrate in that county shall
39 not admit such appraisal report into evidence and shall not consider any such appraisal
40 report. See Rule 12D-9.025(4)(g), F.A.C.
41
42

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1 **The Florida Real Property Appraisal Guidelines**

2 Below are provisions from Section 195.032, Florida Statutes, describing the Florida
3 Real Property Appraisal Guidelines.

- 4
- 5 1. *“The standard measures of value shall provide guidelines for the valuation of*
6 *property and methods for property appraisers to employ in arriving at the just*
7 *valuation of particular types of property consistent with section 193.011...”*
 - 8
 - 9 2. *“The standard measures of value shall assist the property appraiser in the valuation*
10 *of property and be deemed prima facie correct, but shall not be deemed to establish*
11 *the just value of any property.”*
 - 12

13 See Rule 12D-51.003, Florida Administrative Code, for more information on the Florida
14 Real Property Appraisal Guidelines.

15 **NOTICE:**

16 **The Florida Real Property Appraisal Guidelines are Out-of-Date**

17

18

19 The Florida Real Property Appraisal Guidelines, developed under sections 195.002,
20 195.032, and 195.062, F.S., were last revised in 2002 and are now out-of-date due to
21 changes in law. The 2002 guidelines do NOT reflect the impacts of the landmark 2009
22 enactments in sections 194.301 and 194.3015. Pertinent to the guidelines, the 2009
23 legislation greatly increased the level of diligence required for developing and reporting
24 just valuations and also established four additional, determinative standards for
25 developing, reporting, and reviewing just valuations. These four additional standards
26 are: 1) compliance with professionally accepted appraisal practices; 2) avoidance of
27 arbitrarily different appraisal practices within groups of comparable property within the
28 same county; 3) avoidance of superseded case law; and 4) correct application of an
29 appropriate appraisal methodology. The 2002 real property appraisal guidelines cannot
30 be used as any sort of standard for the property appraiser’s development and reporting
31 of just valuations or for the VAB’s review of just valuations. Rather, the current
32 determinative legal standards to be used for just valuation development, reporting, and
33 review are listed under the seven overarching standards for valid just valuations
34 presented below herein. Such standards reflect the 2009 enactments involving sections
35 194.301, 193.011, and 194.3015, F.S.

36

37 More information on these 2009 enactments is presented in a following section titled
38 “The Seven Overarching Standards for Valid Just Valuations.”

39

40 A copy of the 2002 real property guidelines is available at:

41 <http://floridarevenue.com/property/Documents/FLrpg.pdf>

42

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Florida Information on Appraisal Development

In the context of Florida ad valorem tax law, appraisal development is the act, by an appraiser, of applying the appraisal process to arrive at valid just valuations.

More information on Florida’s standards for appraisal development is in a following section titled “The Seven Overarching Standards for Valid Just Valuations.”

Section 4, Article VII, of the Florida Constitution, requires a just valuation of all property for ad valorem taxation, with certain conditions.

Florida’s constitution has “*delegated to the Legislature the responsibility for deciding the specifics of how that ‘just valuation’ would be secured.*” Sunset Harbour Condominium Ass’n v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Collier County v. State, 733 So.2d 1012, 1019 (Fla. 1999).

The Florida Legislature has effectuated the constitutional requirement for just valuations by specifying just valuation standards in several statutes, as explained below in a section titled “The Seven Overarching Standards for Valid Just Valuations.”

Regarding section 193.011, in 1963 the Legislature enacted the initial version of the first seven just valuation factors, effective January 1, 1964. See Chapter 63-250, Laws of Florida, creating Section 193.021, F.S., which was re-numbered in 1969 as Section 193.011, F.S., by Chapter 69-55, Laws of Florida.

In 1965, the Florida Supreme Court held that just value was synonymous with fair market value and defined fair market value as: “*the amount a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell.*” See Walter v. Schuler, 176 So.2d 81 (Fla. 1965).

* Neither the term “fair market value” nor the term “market value” appears in the Florida Constitution. The term “just valuation” appears in the constitution once and the term “just value” appears in the constitution a total of 22 times, all of which terms appear in Article VII pertaining to the valuation of property for ad valorem taxation.

* NOTE: The eighth just valuation criterion did not exist at the time of Walter v. Schuler. The Legislature can override decisional law. See Dept. of Environmental Protection v. Contractpoint Florida Parks, 986 So.2d 1260, 1269 (Fla. 2008).

Then, in 1967, the Legislature added the eighth just valuation criterion (net proceeds of sale) as a new Subsection 193.021(8), F.S. See Chapter 67-167, Laws of Florida, creating

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1 Subsection 193.021(8), F.S., which was re-numbered in 1969 as Subsection 193.011(8), F.S., by
2 Chapter 69-55, Laws of Florida.

3
4 Subsection 193.011(8), F.S., generally known as the “eighth criterion,” was last
5 amended in 1979 and is presented below in its entirety.

6
7 *“The net proceeds of the sale of the property, as received by the seller, after deduction*
8 *of all of the usual and reasonable fees and costs of the sale, including the costs and*
9 *expenses of financing, and allowance for unconventional or atypical terms of financing*
10 *arrangements. When the net proceeds of the sale of any property are utilized, directly or*
11 *indirectly, in the determination of just valuation of realty of the sold parcel or any other*
12 *parcel under the provisions of this section, the property appraiser, for the purposes of*
13 *such determination, shall exclude any portion of such net proceeds attributable to*
14 *payments for household furnishings or other items of personal property.”*

15
16 When the eighth criterion was added in 1967 to the statute containing just valuation
17 factors, the Legislature apparently provided discretion to property appraisers that would
18 allow for, but not require, just value to be a number different than before enactment of
19 the “net proceeds of sale” factor.

20
21 The rule of statutory interpretation is to assume that the Legislature intended its
22 amendment to serve a useful purpose. “Likewise, when a statute is amended, it is
23 presumed that the Legislature intended it to have a meaning different from that
24 accorded to it before the amendment.” Carlisle v. Game and Freshwater Fish Commission,
25 354 So.2d 362 (Fla. 1977); see also Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st
26 DCA 1998).

27
28 For many years, Florida property appraisers have interpreted subsection 193.011(8),
29 F.S., by applying across-the-board, eighth criterion adjustments in arriving at just
30 valuations of real property.

31
32 Since its enactment and amendments, this eighth just valuation criterion has been
33 applied by property appraisers in actual practice to produce a just value for real property
34 that is generally less than fair market value.

35
36 In 1984, when reviewing a 1980 assessment, a federal appellate court found that just
37 value as determined under Subsection 193.011(8), F.S., does not represent full market
38 value. See Louisville and Nashville Railroad Co. v. Department of Revenue, State of Fla., 736
39 F.2d 1495 (11th Cir. (Fla.) July 24, 1984).

40
41 A Florida appellate court stated the following in an example regarding the eighth
42 criterion: “*Subtracting the \$15,000 (cost of sale) from the \$100,000 selling price leaves*

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1 *a net value of \$85,000. We find no impropriety in using this approach to valuation.” See*
2 Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272 (Fla. 4th DCA
3 1995) review denied 673 So.2d 30 (Fla. 1996).

4
5 The eighth criterion is addressed in more detail in the last three sections of this module.

6
7 Florida law defines real property as land, buildings, fixtures, and all other improvements
8 to land. See Subsection 192.001(12), F.S.

9
10 Florida law defines personal property as being divided into the following four categories:
11 1) household goods, 2) intangible personal property, 3) inventory, and 4) tangible
12 personal property. See Subsection 192.001(11), F.S.

13
14 Subsection 193.011(8), F.S., states the following in pertinent part: *“When the net*
15 *proceeds of the sale of any property are utilized, directly or indirectly, in the*
16 *determination of just valuation of realty of the sold parcel or any other parcel under the*
17 *provisions of this section, the property appraiser, for the purposes of such*
18 *determination, shall exclude any portion of such net proceeds attributable to payments*
19 *for household furnishings or other items of personal property.”*

20
21 The just value of any personal property must be excluded from just valuations of real
22 property.

23 24 25 **The Eight Factors of Just Valuation in Section 193.011, F.S.**

26 After the landmark 2009 legislation, the eight just valuation factors in section 193.011
27 are now incorporated into section 194.301 in three places and must be applied together
28 with the other just valuation standards in sections 194.301 and 194.3015, F.S., and in
29 other applicable law, so that each standard is given lawful meaning.

30
31 Section 193.011, Florida Statutes, provides the following on just valuation.

32
33 ***“Factors to consider in deriving just valuation.*** – *In arriving at just valuation as*
34 *required under s. 4, Art. VII of the State Constitution, the property appraiser shall take*
35 *into consideration the following factors:*

36
37 (1) *The present cash value of the property, which is the amount a willing purchaser*
38 *would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash*
39 *or the immediate equivalent thereof in a transaction at arm's length;*

40
41 (2) *The highest and best use to which the property can be expected to be put in the*
42 *immediate future and the present use of the property, taking into consideration the*

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- 1 *legally permissible use of the property, including any applicable judicial limitation, local*
2 *or state land use regulation, or historic preservation ordinance, and any zoning*
3 *changes, concurrency requirements, and permits necessary to achieve the highest and*
4 *best use, and considering any moratorium imposed by executive order, law, ordinance,*
5 *regulation, resolution, or proclamation adopted by any governmental body or agency or*
6 *the Governor when the moratorium or judicial limitation prohibits or restricts the*
7 *development or improvement of property as otherwise authorized by applicable law.*
8 *The applicable governmental body or agency or the Governor shall notify the property*
9 *appraiser in writing of any executive order, ordinance, regulation, resolution, or*
10 *proclamation it adopts imposing any such limitation, regulation, or moratorium;*
11
12 *(3) The location of said property;*
13
14 *(4) The quantity or size of said property;*
15
16 *(5) The cost of said property and the present replacement value of any improvements*
17 *thereon;*
18
19 *(6) The condition of said property;*
20
21 *(7) The income from said property; and*
22
23 *(8) The net proceeds of the sale of the property, as received by the seller, after*
24 *deduction of all of the usual and reasonable fees and costs of the sale, including the*
25 *costs and expenses of financing, and allowance for unconventional or a typical terms of*
26 *financing arrangements. When the net proceeds of the sale of any property are utilized,*
27 *directly or indirectly, in the determination of just valuation of realty of the sold parcel or*
28 *any other parcel under the provisions of this section, the property appraiser, for the*
29 *purposes of such determination, shall exclude any portion of such net proceeds*
30 *attributable to payments for household furnishings or other items of personal property.”*

31
32 Section 193.011 is now part of the determinative just valuation standards provided in
33 sections 194.301 and 194.3015 and in other applicable law, as explained in the next
34 section titled “The Seven Overarching Standards for Valid Just Valuations.”
35
36

The Seven Overarching Standards for Valid Just Valuations

37
38 The 2009 statutory changes in sections 194.301 and 194.3015, F.S., greatly increased
39 the standard of care (level of diligence) for the county appraiser’s development and
40 reporting of just valuations for ad valorem taxation in Florida.
41

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1 The 2009 changes also established four additional, determinative statutory standards
2 for valid just valuations, as follows: 1) compliance with professionally accepted appraisal
3 practices, 2) avoidance of arbitrarily different appraisal practices within groups of
4 comparable property within the same county, 3) avoidance of superseded case law, and
5 4) correct application of an appropriate appraisal methodology.
6

7 Under Florida's current legal framework for just valuations, there are seven overarching
8 standards for valid just valuations. These seven standards must be read and applied
9 together, so that each is given appropriate and lawful meaning in light of the facts.
10

11 Compliance with these seven standards requires the appraiser to correctly apply the
12 appraisal process and "...*this important function requires expertise, diligence, sound*
13 *judgment, and objectivity...*" See *Uniform Appraisal Standards for Federal Land Acquisition*
14 *2016* (Appraisal Foundation), page 203.
15

16 These seven overarching standards are listed and described below.
17

18 **1. Compliance with Professionally Accepted Appraisal Practices for Appraisal** 19 **Development and Appraisal Reporting** 20

21 The section 194.301 standard of professionally accepted appraisal practices applies to
22 the entire appraisal process that includes both appraisal development and appraisal
23 reporting, each of which are addressed separately below.
24

25 Professionally accepted appraisal practices require appraisers to recognize and comply
26 with current laws and regulations that apply to the appraiser or to the appraisal
27 assignment. See Competency Rule, *Uniform Standards of Professional Appraisal Practice,*
28 *2020-2021 Edition* (USPAP), page 11.
29

30 Compliance with professionally accepted appraisal practices encompasses compliance
31 with all other law comprising the seven overarching standards.
32

33 Professionally accepted appraisal practices comprise a voluminous set of practices set
34 forth in thousands of pages of professional appraisal references. The current edition of
35 USPAP is a set of standards consisting of 58 pages that address both appraisal and
36 appraisal review for all types of property.
37

38 Thus, the two are not the same thing because the professionally accepted appraisal
39 practices standard is much more extensive and detailed than USPAP.
40

41 While USPAP is a useful source of information on professionally accepted appraisal
42 practices, it not a substitute for such practices.

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Key Elements of Appraisal Development Under Professionally Accepted Appraisal Practices

In the context of Florida ad valorem tax law, appraisal development is the act, by an appraiser, of applying the appraisal process to arrive at valid just valuations.

“Relevant characteristics” is a core appraisal term defined as: “*features that may affect a property’s value or marketability such as legal, economic, or physical characteristics.*” See Definitions, *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition* (Washington, DC: The Appraisal Foundation), page 5.

Under professionally accepted appraisal practices, the three categories of appraisal data that must be applied in the appraisal process are: legal, physical, and economic. See Standard 5, Mass Appraisal Development, *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition*, page 33. Also, see section 193.1142(1)(c)2., F.S.

Appraisers are required “*to use due diligence and due care.*” See Competency Rule, *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition*, page 11.

An appraiser’s valuation must be “*based on careful scrutiny of all the data available.*” See *CSX Transp., Inc. v. Ga. Bd. of Equalization*, 552 U.S. 9 (2007).

Appraisers have the “*...responsibility to obtain knowledge of all pertinent facts and circumstances that can be acquired with diligent inquiry and search.*” See *Uniform Appraisal Standards for Federal Land Acquisition 2016* (Appraisal Foundation), page 204.

“*The appraiser must be diligent in data collection and competently apply the accepted methods and techniques of the appraisal profession...*” See *Uniform Appraisal Standards for Federal Land Acquisition 2016* (Appraisal Foundation), page 203.

For appraisal evidence to support a just valuation, the evidence must be relevant to the subject property and must satisfy each of the just valuation standards provided in law.

The three approaches to just valuation are: 1) the cost less depreciation approach, 2) the sales comparison approach, and 3) the income capitalization approach.

- Each of the three approaches has variants, depending on: 1) the legal, physical, and economic attributes of the subject property; 2) the availability of appraisal data; and 3) the appropriate appraisal methodology.

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1 Generally, property appraisers use mass appraisal techniques to develop just valuations
2 each year, but property appraisers may also use single-property appraisal techniques.
3

4 When properly applied in compliance with all requirements of law, both mass appraisal
5 and single-property appraisal are professionally accepted appraisal practices.
6

7 It is implicit in mass appraisal that, even when properly specified and calibrated mass
8 appraisal models are used, some individual value conclusions will not meet standards of
9 reasonableness, consistency, and accuracy. See Standard 5, Mass Appraisal Development,
10 *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition, page 37.*
11

12 Regardless of the appraisal approach or technique used to develop a particular just
13 value, the approach, technique, and value are subject to review to determine whether
14 the appraisal process complies with all applicable legal standards.
15

16 Summarized below are some key elements of the standard of care (level of diligence)
17 for development of just valuations for Florida ad valorem tax purposes:
18

- 19 • Identify the legal, physical, and economic attributes of the subject property
20
- 21 • Identify and comply with all applicable law, and avoid superseded case law
22
- 23 • Determine the required data, research, and analysis, and identify the professionally
24 accepted appraisal practices and an appropriate appraisal methodology
25
- 26 • Collect, analyze, and maintain legal, physical, and economic data as necessary for
27 credible valuations that comply with applicable law
28
- 29 • Apply due diligence and due care in the appraisal process, avoid carelessness and
30 negligence, and avoid significant errors of commission and omission
31
- 32 • Comply with each of the 193.011 factors consistent with all other just valuation
33 standards (avoid cursory consideration of 193.011 factors, correctly apply the factors
34 needed for a credible and lawful just valuation, and develop professionally accepted
35 reasons for not applying any factor not applied)
36
- 37 • Avoid appraisal practices that are arbitrarily different from the appraisal practices
38 applied to other comparable property in the same county
39

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- 1 • Correctly apply an appropriate appraisal methodology that complies with
2 professionally accepted appraisal practices and each of the other legal standards
3
- 4 • Reconcile data and analyses used, and correctly employ quality review procedures
5

Key Elements of Appraisal Reporting Under Professionally Accepted Appraisal Practices

6
7
8
9 Professionally accepted appraisal practices require communicating, or reporting, the
10 appraisal process used to develop the just valuation. An appraisal report is any
11 communication, written or oral, about the appraisal process applied in just valuations.
12

13 Appraisal reporting is part of the appraisal process and is how the appraiser
14 demonstrates compliance with each of the just valuation standards provided by law.
15

16 Conclusory statements made by an appraiser reporting an appraisal process are not
17 sufficient and are not credible. See Scripps Howard Cable Co. v. Havill, 665 So.2d 1071,
18 1077 (Fla. 5th DCA 1995), approved, 742 So.2d 210 (Fla. 1998).
19

20 The text, *Fundamentals of Mass Appraisal*, published in 2011 by the International
21 Association of Assessing Officers, pages 4-5, lists appraisal reporting as part of the
22 appraisal process and then states in pertinent part:
23

24 *“Professional standards, however, require all appraisers to work systematically,*
25 *document their work, communicate their opinions of value clearly, and behave ethically.”*
26

27 The text, *The Appraisal of Real Estate, Fifteenth Edition*, published in 2020 by the
28 Appraisal Institute, pages 31 and 37, lists appraisal reporting as part of the appraisal
29 process and then states in part as follows:
30

31 *“The report of the value opinion or conclusion addresses the data analyzed, the*
32 *methods applied, and the reasoning that led to the value conclusion and does so in a*
33 *manner that enables the intended users to properly understand the appraiser’s findings*
34 *and conclusions. The objective of the appraisal report is to communicate the valuation*
35 *process with sufficient supporting evidence and logic to ensure that the assignment*
36 *results are credible for the intended use.”*
37

38 Standard 6, Mass Appraisal Reporting, *Uniform Standards of Professional Appraisal*
39 *Practice, 2020-2021 Edition*, page 39, requires appraisers to explain the exclusion of
40 any of the three approaches to value and to:
41

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1 “provide sufficient information to enable the client and intended users to have
2 confidence that the process and procedures used conform to accepted methods and
3 result in credible value conclusions;”
4

5 A recent trial court judgment states as follows regarding appraisal reporting:
6

7 “The 2009 legislation requires the Court to determine whether the appraiser used an
8 appropriate methodology in making the assessment. To allow the Court to make this
9 determination, the property appraiser must present sufficient evidence that describes
10 the appraisal methodology and explains how and why it was applied in valuing the
11 Subject Property. Under section 194.301(1), the appraiser has the burden of going
12 forward and presenting testimonial and documentary evidence explaining how the
13 appraiser satisfied each of the just valuation criteria.”

14 See Dillard's, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).
15

16 Summarized below are some key elements of the standard of care (level of diligence)
17 for just valuation reporting:
18

- 19 • Must provide meaningful disclosure of procedures applied in the appraisal process
20
- 21 • Must be relevant to the legal, physical, and economic attributes of the property, each
22 of the applicable legal criteria, and the appraisal process
23
- 24 • Must be credible in the context of Florida ad valorem property tax appraisal
25
- 26 • Must be clear and accurate to enable intended users to understand the appraisal
27 process
28
- 29 • Must include explanations and reasons, addressing each of the valuation approaches
30 and each of the applicable legal criteria, regarding what was actually done and how
31 and why, in developing the just value
32
- 33 • Must provide lawful and professionally accepted explanations and reasons for not
34 applying a legal criterion or not applying an appraisal approach
35
- 36 • Must be sufficient for intended users to understand how and why the just value was
37 developed via the methodology used
38
- 39 • Must avoid misleading statements, conclusory statements, and superseded case law
40
41
42

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1 **2. Compliance with Each of the Just Valuation Factors in Section 193.011, F.S.**

2
3 After the landmark 2009 legislation, the eight just valuation factors in section 193.011
4 are now incorporated into section 194.301 in three places.

- 5
- 6 • These eight just valuation factors must now be applied together with the other just
7 valuation standards in sections 194.301 and 194.3015, F.S., and in other applicable
8 law, so that each standard is given professionally accepted and lawful meaning.
9
 - 10 • The method of just valuation and the weight to be given to each of the section
11 193.011 factors is now governed solely by: 1) the legal, physical, and economic
12 characteristics of the subject property; 2) the four additional determinative standards
13 in sections 194.301 and 194.3015, F.S.; and 3) all other applicable law.
14
 - 15 • In just valuations under current law, it is necessary to actually apply the section
16 193.011 factors that are appropriate for compliance with the four new determinative
17 standards in sections 194.301 and 194.3015 and all other applicable law.
18
 - 19 • Under the dictates of section 194.301 and 194.3015, F.S., for any section 193.011
20 factor not applied in a particular just valuation, the appraiser must report a clear,
21 logical, fact-based, and professionally accepted reason for excluding the factor.
22

23 Pre-2009 just valuation case law is replete with obsolete statements indicating a much
24 lower level of diligence (standard of care) for developing and reporting just valuations
25 than required by current law, and these obsolete statements must be avoided.
26

27 Just valuation evidence, including evidence intended to show the property appraiser's
28 compliance with each of the section 193.011 factors, "must be real, material, pertinent,
29 and relevant evidence, as opposed to ethereal, metaphysical, speculative, theoretical,
30 or hypothetical, and it must have definite probative value." See Singh v. Walt Disney
31 Parks, --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).
32

33 The legal, physical, and economic characteristics of the subject property must be
34 reflected in the appraisal data applied for the eight factors in section 193.011 and must
35 be applied in all just valuation approaches.
36

37 The appraiser's compliance with legal standards, including the just valuation
38 factors in section 193.011, must be demonstrated in the appraisal data, analyses,
39 practices, and methods used to develop and report just valuations.
40

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1 Appraisal approaches (methods), the application of legal standards including the section
2 193.011 factors, and the validity of resulting values are interconnected and cannot
3 logically be separated.

4
5 In administrative reviews, the overarching legal standards should be applied in
6 determining whether the appraisal methodology used in making a value
7 assessment is appropriate under the circumstances and this, in turn, should be
8 applied in determining whether the value assessment is valid.

9
10 Below are two examples of how court decisions have correctly applied the section
11 193.011 factors in reviewing appraisal methodology and resulting just valuations.

- 12
13 • Though these examples are pre-2009, they show the connection between legal
14 criteria, appraisal methods, and values, and are used here for that purpose.

15
16 Example 1: The court's decision described a mathematical connection between
17 "erroneous consideration" of statutory criteria, an "improper" appraisal method, and
18 an excessive value. See Holly Ridge Ltd. Partnership v. Pritchett, 936 So.2d 694, 697-
19 698 (Fla. 5th DCA 2006), rehearing denied.

20
21 Example 2: The court's decision connected the appraisal method, the application of
22 legal criteria, and the rejection of an appraised value, in holding as follows:

23
24 "The trial court rejected the appellants' appraisal because it found that their appraisal
25 method failed to take into consideration all the factors set forth in section 193.011,
26 Florida Statutes (1981)."

27
28 "Failure to consider one or more of the factors set forth in section 193.011 is sufficient to
29 invalidate an appraisal done by a tax assessor..."

30
31 "We also think the lower court correctly rejected appellants' appraisal because the
32 method used was too speculative."

33
34 See Muckenfuss v. Miller, 421 So.2d 170, 173-174 (Fla. 5th DCA 1982), petition for review
35 denied, 430 So.2d 450, 451 (Fla. 1983).

37 **3. Avoidance of Arbitrarily Different Appraisal Practices Within Groups of** 38 **Comparable Property Within the Same County.**

39
40 Section 194.301(2)(a)3., F.S., provides that to withstand judicial or administrative
41 review, a just valuation cannot be: "...*arbitrarily based on appraisal practices that are*

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1 *different from the appraisal practices generally applied by the property appraiser to*
2 *comparable property within the same county.”*
3

4 Along similar lines, section 195.0012, F.S., expresses legislative intent for assessment
5 uniformity including “...*uniform assessment as between property within each county...*”
6

7 The U.S. Supreme Court has also emphasized that “*the uniformity and equality required*
8 *by law*” is of paramount concern in property assessment valuations. See Sioux City
9 Bridge Co. v. Dakota Cty. Neb., 260 U.S. 441, 446–47 (1923), cited in Southern Bell Tel. & Tel.
10 Co. v. Dade Cty., 275 So. 2d 4, 8 (Fla. 1973).
11

12 Avoiding arbitrarily different appraisal practices within groups of comparable property
13 within the same county supports the goal of assessment uniformity.
14

15 Selective reappraisal is an example of arbitrarily different appraisal practices. The text,
16 *Mass Appraisal of Real Property*, published in 1999 by the International Association of
17 Assessing Officers, page 315, explains selective reappraisal, stating in pertinent part:
18

19 “*The reliability of sales ratio statistics depends on unsold parcels being appraised in the*
20 *same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio*
21 *results, possibly rendering them useless. Equally important, selective reappraisal of*
22 *sold parcels (“sales chasing”) is a serious violation of basic appraisal uniformity and is*
23 *highly unprofessional.”*
24

25 Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See
26 Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).
27

28 **4. Avoidance of Superseded Case Law.**

29

30 In 2009, the Florida Legislature made crystal clear its intent to supersede case law that
31 is inconsistent with legislative enactments in sections 194.301 and 194.3015, F.S.
32

33 The 2009 enactments re-engineered the development, reporting, and review of just
34 valuations in Florida. Yet, in some cases, these major statutory changes have not been
35 applied in practice and this continues to be a serious problem.
36

37 Pre-2009 case law, as well as some post-2009 legal arguments based on obsolete pre-
38 2009 case law, do NOT reflect the major statutory changes enacted in 2009.
39

40 For public trust to exist in the VAB process, VABs, VAB attorneys, and special
41 magistrates must understand and act in accordance with this landmark legislation and
42 must be diligent in avoiding the use of obsolete case law in the VAB process.

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1
2 The last sentence in subsection 194.301(1), F.S., now states: “*The provisions of this*
3 *subsection preempt any prior case law that is inconsistent with this subsection.*”

4
5 Further, section 194.3015, F.S., now states in its entirety:

6
7 “(1) *It is the express intent of the Legislature that a taxpayer shall never have the*
8 *burden of proving that the property appraiser’s assessment is not supported by any*
9 *reasonable hypothesis of a legal assessment. All cases establishing the every-*
10 *reasonable-hypothesis standard were expressly rejected by the Legislature on the*
11 *adoption of chapter 97-85, Laws of Florida. It is the further intent of the Legislature that*
12 *any cases published since 1997 citing the every-reasonable-hypothesis standard are*
13 *expressly rejected to the extent that they are interpretive of legislative intent.*”

14
15 “(2) *This section is intended to clarify existing law and apply retroactively.*”

16
17 In 1997, the Florida Legislature, in an attempt to implement fairness for property
18 taxpayers, enacted the original version of section 194.301, F.S., stating in pertinent part:

19
20 “*In no case shall the taxpayer have the burden of proving that the property appraiser’s*
21 *assessment is not supported by any reasonable hypothesis of a legal assessment.*”

22
23 In the 1996 to 1998 period, multiple law articles addressed issues in the assessment
24 appeal process and legislative efforts to address fairness for property taxpayers.

25
26 In 2001, despite the 1997 enactment of section 194.301, F.S., in Wal-Mart v. Todora,
27 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the court issued a decision that actually applied
28 the “*reasonable hypothesis*” standard, stating:

29
30 “*Because there are so many well-recognized approaches for arriving at an appraisal,*
31 *the appraiser’s decision may be overturned only if there is no reasonable hypothesis to*
32 *support it.*”

33
34 In 2002, again despite the 1997 enactment of section 194.301, in Mazourek v. Wal-
35 Mart, 831 So. 2d 85, 91 (Fla. 2002), the court extended the error by quoting the 2001
36 decision in Wal-Mart v. Todora, likewise stating:

37
38 “*Because there are so many well-recognized approaches for arriving at an appraisal,*
39 *the appraiser’s decision may be overturned only if there is no reasonable hypothesis to*
40 *support it.*”

41

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1 In 2006, the decision from In re Litestream Technologies, LLC, 337 B.R. 705, 710
2 (Bkrcty. M.D. Fla. 2006) further extended the same error by quoting from Mazourek,
3 instead of following the Legislature's 1997 directive in section 194.301, F.S.

4
5 Then, in 2009, the Florida Legislature completely amended section 194.301 and created
6 section 194.3015, addressing in both the problem of superseded case law.

7
8 In 2013 in CVS EGL Fruitville Sarasota FL, LLC and Holiday CVS, LLC. v. Todora, 124
9 So. 3d 289 (Fla. 2d DCA 2013), the Second District Court of Appeal admitted the error it
10 made in the aforementioned 2001 case of Wal-Mart v. Todora, and explained how this
11 error was extended when the Florida Supreme Court quoted the error in its
12 aforementioned 2002 decision in Mazourek v. Wal-Mart.

13
14 Also, in CVS EGL, the Second District Court explained an example of the legislative
15 intent behind the 2009 enactments in sections 194.301 and 194.3015, stating:

16
17 *"Because the legislature rejected the application of "any cases published since 1997*
18 *citing the every-reasonable-hypothesis standard," it follows that the legislature intended*
19 *to supersede Todora and Mazourek. We must therefore give deference to the*
20 *legislature and conclude that Todora and Mazourek are not controlling."*

21
22 In July 2016, the difficulty with applying sections 194.301 and 194.3015 appeared in a
23 final judgment (Singh v. Darden Restaurants, Inc.) where the trial court erred because it
24 failed to apply standards in sections 194.301 and 194.3015, and instead applied
25 obsolete case law standards based on assessment "discretion."

26
27 Then, in Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019),
28 the Fifth District Court overturned the July 2016 trial judgment and explained how the
29 trial judgment erroneously applied pre-2009 case law, stating in pertinent part:

30
31 *"...in its final judgment, the trial court cited to language from Mazourek v. Wal-Mart*
32 *Stores, Inc., 831 So. 2d 85, 89 (Fla. 2002), that "[t]he property appraiser's determination*
33 *of assessment value is an exercise of administrative discretion within the officer's field*
34 *of expertise." The Mazourek decision preceded the 2009 amendment to section*
35 *194.301, Florida Statutes, where the Legislature articulated that the value of property*
36 *must be determined by an appraisal methodology that met the criteria of section*
37 *193.011 and professionally accepted appraisal practices."*

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Other Examples of Superseded Case Law

The holdings in some court decisions based on the legislatively rejected “*reasonable hypothesis*” standard show an interconnection between such standard and the obsolete concomitant (attendant) standards that also appeared in such holdings.

For example, in CVS EGL (2013), the court rejected the concomitant standard of “*within the range of reasonable appraisals*” because of its interconnection with the legislatively rejected “*reasonable hypothesis*” standard.

Eight examples of superseded case law are listed and described below.

None of these superseded standards is harmless because they unequivocally reflect a lower standard of care and diligence for developing, reporting, and reviewing just values than the standards required by current law in sections 194.301 and 194.3015.

VABs, VAB attorneys, and special magistrates must be diligent to avoid using any of these types of superseded standards and to reject any arguments espousing them.

Superseded Concomitant Standard No. 1:

“the core issue in any action challenging a tax assessment is the amount of the assessment, not the methodology utilized in arriving at the valuation”

In Bystrom v. Whitman, 488 So. 2d 520, 521 (Fla. 1986), the court applied this obsolete standard together with the rejected “*reasonable hypothesis*” standard.

In 2007 in CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007), the U.S. Supreme Court emphasized the necessity of reviewing appraisal methodology in valuations disputes, stating: “*We do not see how a court can go about determining true market value if it may not look behind the State’s choice of valuation methods.*”

In 2009, the Legislature enacted four new determinative just valuation standards, each providing methodological requirements for developing and reviewing just valuations.

Superseded Concomitant Standard No. 2:

“within the range of reasonable appraisals”

In Blake v. Xerox, 447 So. 2d 1348 (Fla. 1984), the court equated this obsolete concomitant standard with the “*reasonable hypothesis*” standard, stating:

“Regardless of which method was theoretically superior, the trial court was bound to uphold the appraiser’s determination if it was lawfully arrived at and within the range of

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1 *reasonable appraisals, that is, if it was supported by any reasonable hypothesis of*
2 *legality.”*

3
4 In CVS EGL (2013), the court applied section 194.3015 in overturning a trial judgment
5 that had used the legislatively rejected “*reasonable hypothesis*” standard and its
6 concomitant standard of “*within the range of reasonable appraisals*,” stating:

7
8 “At no point during the trial court’s application of these standards *should it consider*
9 *whether the assessment is within the range of reasonable appraisals or whether it is*
10 *supported by any reasonable hypothesis of legality.*”

Superseded Concomitant Standard No. 3:

11
12
13 “*[t]he property appraiser’s determination of assessment value*
14 *was an exercise of administrative discretion within the officer’s field of expertise*”

15
16 In Blake v. Xerox, 447 So. 2d 1348, 1350 (Fla. 1984), the decision linked this old
17 standard with the legislatively rejected “*reasonable hypothesis*” standard.

18
19 This obsolete statement runs afoul of diligence requirements in the current standards of
20 professionally accepted appraisal practices and appropriate appraisal methodologies.

21
22 In Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019), the
23 court recognized this concomitant standard as being obsolete since 2009.

Superseded Concomitant Standard No. 4:

24
25 “*the method of valuation and the weight*
26 *to be given each factor is left to the appraiser’s discretion*”

27
28
29 In Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the holding linked this
30 obsolete standard with the legislatively rejected “*reasonable hypothesis*” standard and
31 with the superseded “*within the range of reasonable appraisals*” standard.

32
33 In its 2007 decision in CSX, the U.S. Supreme Court emphasized the necessity of
34 reviewing appraisal methodology in ad valorem tax valuation disputes, stating: “*We do*
35 *not see how a court can go about determining true market value if it may not look*
36 *behind the State’s choice of valuation methods.*”

37
38 In 2009, the Legislature enacted four new determinative just valuation standards, each
39 providing methodological requirements for developing and reviewing just valuations.

40

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1 The valuation method and the weight actually given to each section 193.011 factor can
2 be proven only by the actual application and reporting of an appropriate appraisal
3 process that complies with all applicable law and results in a valid just valuation.
4

5 Thus, under current law, the valuation method and the weight given to each section
6 193.011 factor are governed solely by the legal, physical, and economic characteristics
7 of the subject property and by the appropriate application of all just valuation standards
8 in sections 194.301 and 194.3015 and all other applicable law.
9

Superseded Concomitant Standard No. 5:

10
11 *“The determination of just value inherently and necessarily requires*
12 *the exercise of appraisal judgment and broad discretion by Florida property appraisers.”*
13

14 In Fla. Department of Revenue v. Howard, 916 So. 2d 640 (Fla. 2005), the decision
15 references the two preceding obsolete statements based on “*discretion*,” along with this
16 third variant of the obsolete “*discretion*” standard.
17

18 This “*discretion*” variant was based on decades-old legal concepts from a time when the
19 now legislatively rejected “*reasonable hypotheses*” standard held sway.
20

21 Notably, the term “*discretion*” does not appear in the 2020-2021 edition of the Uniform
22 Standards of Professional Appraisal Practice and, likewise, does not appear in the
23 widely cited appraisal text, *The Appraisal of Real Estate, 15th Edition*, published in 2020
24 by the Appraisal Institute.
25

26 Regarding “*appraisal judgment*,” key excerpts from the *Uniform Appraisal Standards for*
27 *Federal Land Acquisition 2016*, published by the Appraisal Foundation, pages 203-204,
28 describe the diligent application of sound appraisal judgment in the appraisal process:
29

30 *“Serving this important function requires expertise, diligence, sound judgment, and*
31 *objectivity...”*
32

33 *“The appraiser must be diligent in data collection and competently apply the accepted*
34 *methods and techniques of the appraisal profession...”*
35

36 *“Appraisers must exercise sound judgment based on known pertinent facts and*
37 *circumstances, and it is their responsibility to obtain knowledge of all pertinent facts and*
38 *circumstances that can be acquired with diligent inquiry and search. They must then*
39 *weigh and consider the relevant facts, exercise sound judgment, and develop an*
40 *opinion that is completely unbiased by any consideration favoring either the landowner*
41 *or the government.”*
42

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1 Thus, appraisal judgment is NOT a substitute for appraisal expertise, diligence, or
2 objectivity. For valid just valuations, appraisal judgment must be sound and must be
3 applied in compliance with the seven overarching standards for valid just valuations.
4

Superseded Concomitant Standard No. 6:

5 *“Appraisal is an art, not a science”*
6
7

8 In 1969 in Powell v. Kelly 223 So. 2d 305 (Fla. 1969), court applied this obsolete
9 standard along with the legislatively rejected “*reasonable hypothesis*” standard.
10

11 In its 2007 decision on ad valorem appraisal methodology, the U.S. Supreme Court held
12 that appraisal is an “*applied science*.” See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552
13 U.S. 9 (2007), 552 U.S. 9 (2007).
14

15 On appraisal being a science, Appendix A of the widely cited textbook, *The Appraisal of*
16 *Real Estate, 15th Edition*, published in 2020 by the Appraisal Institute, states:
17

18 *“Professional appraisal practice applies the scientific processes of economic analyses*
19 *(i.e., the valuation process) to develop conclusions in an impartial, objective manner,*
20 *without bias or any desire on the part of appraisers to accommodate their own interests*
21 *or the interests of their clients. To form sound conclusions, appraisers avoid personal*
22 *beliefs or biases and search for market evidence to support their appraisal opinions. It is*
23 *this level of independence and freedom from either personal views or personal financial*
24 *gain, and strict adherence to the scientific principles contained in the valuation process,*
25 *that separate the profession of appraisal from other fields that also deal with real estate*
26 *values.”*
27

Superseded Concomitant Standard No. 7:

28 *“Because there are so many well-recognized approaches for arriving at an appraisal...”*
29
30

31 In Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the Second District Court
32 ignored section 194.301 and applied this obsolete concomitant standard together with
33 the now legislatively rejected “*reasonable hypothesis*” standard, stating:
34

35 *“Because there are so many well-recognized approaches for arriving at an appraisal,*
36 *the appraiser’s decision may be overturned only if there is no reasonable hypothesis to*
37 *support it.”*
38

39 Then, in CVS EGL (2013), the Second District Court admitted its 2001 error in Wal-Mart
40 v. Todora and applied section 194.3015 in overturning a May 2012 trial judgment that
41 had erroneously applied these superseded standards.
42

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Superseded Concomitant Standard No. 8:

“an appraiser may reach a correct result for the wrong reason”

In City National Bank v. Blake, 257 So. 2d 264 (Fla. 3d DCA 1972), the court equated this concomitant standard with the now legislatively rejected every “*reasonable hypothesis*” standard, stating:

“A tax assessment is presumed correct, and in order to successfully challenge it, the taxpayer must present proof which excludes every reasonable hypothesis of a legal assessment. That is, an assessor may reach a correct result for the wrong reason.”

This old standard was rendered obsolete by the U.S. Supreme Court’s 2007 decision in CSX and by Florida’s enactments in sections 194.301 and 194.3015, F.S.

5. Compliance with All Other Applicable Law.

Other applicable law includes just valuation standards for particular situations. These standards may exist in Florida Statutes or in currently applicable case law.

Examples of other just valuation standards from statutes include the following:

- Section 192.042(1), F.S., provides the January 1 date of assessment.
- Section 192.042(1), F.S., provides just valuation criteria for real property not substantially completed as of January 1.
- Sections 192.037(10), (11), and (12), F.S., provide additional just valuation criteria for timeshare real property.
- Sections 193.017, 420.507(46), 420.5093(5) and (6), and 420.5099(5) and (6), provide additional just valuation criteria for low-income housing property.
- Section 193.018, F.S., provides additional just valuation criteria for community land trust property.
- Section 193.0237, F.S., provides definitions and a methodology for the assessment of multiple parcel buildings.
- Section 193.501, F.S., provides additional just valuation criteria for certain conservation property.

Other applicable law may also include current case law standards such as:

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- 1
2 • Case law specifies fee simple estate as the interest to be appraised in just valuations.
3 See Schultz v. TM Fla.-Ohio Realty, Ltd., 577 So.2d 573 (Fla. 1991), and see Dept. of
4 Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 (Fla. 1977).
5
6 • Case law precludes real property just valuations based on bulk ownership. See
7 Interlachen Lakes Estates, Inc. v. Snyder, 304 So.2d 433 (Fla. 1973).
8
9 • Case law precludes just valuation methods that include intangible value. See Scripps
10 Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), and see Singh v. Walt Disney Parks,
11 --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).
12

6. Correct Application of an Appropriate Appraisal Methodology

13
14
15 After its 2009 amendment, section 194.301(1), F.S., provides in pertinent part:

16
17 *“However, a taxpayer who challenges an assessment is entitled to a determination by*
18 *the value adjustment board or court of the appropriateness of the appraisal*
19 *methodology used in making the assessment. The value of property must be*
20 *determined by an appraisal methodology that complies with the criteria of s. 193.011*
21 *and professionally accepted appraisal practices. The provisions of this subsection*
22 *preempt any prior case law that is inconsistent with this subsection.”*
23

24 An appropriate appraisal methodology is one that: 1) identifies and is appropriately
25 based on the legal, physical, and economic characteristics of the subject property, 2)
26 complies with overarching standards one through five, and 3) is correctly applied.
27

28 In Scripps Howard Cable Co. v. Havill, 665 So. 2d 1071 (Fla. 5th DCA 1995), *approved*,
29 742 So. 2d 210 (Fla. 1998), the court held that the appraisal method under review was
30 not appropriate under the circumstances and certified the following question:
31

32 *“Is the Income/Unit Rule Method of Appraisal an Appropriate Method of Assessing the*
33 *Tangible Personal Property of Television Cable Companies?”*
34

35 Then, in Scripps Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), the Florida
36 Supreme Court answered the certified question in the negative and approved the
37 decision of the Fifth District, holding that the method was not appropriate because it
38 unlawfully included the value of intangible property.
39

40 In 2007, the U.S. Supreme Court held that disputes over ad valorem tax values require
41 review of the appraisal methodology. See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552

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1 U.S. 9 (2007), 552 U.S. 9 (2007) (“We do not see how a court can go about determining true
2 market value if it may not look behind the State’s choice of valuation methods”).

3
4 In August 2020, the court issued its final decision in Singh v. Walt Disney Parks, ---
5 So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020), stating in pertinent part:

6
7 *“At trial, the parties agreed that the income approach to value was a*
8 *professionally accepted appraisal practice and provided the most reliable*
9 *indicator of value, but they disputed the proper methodology for performing such*
10 *an assessment.”*

11
12 *“Moreover, it ruled that even if the Rushmore method was a professionally accepted*
13 *appraisal practice, it could not be used in a manner that violated Florida law. The trial*
14 *court concluded that by including value attributable to Disney business activities on the*
15 *Property, Appraiser applied the Rushmore method in a way that violated Florida law.”*

16
17 *“We agree with the trial court that Appraiser, in the manner in which he applied the*
18 *Rushmore method, impermissibly included the value of Disney’s intangible business*
19 *assets in its assessment.”*

20
21 The Disney decision shows even if an appraisal practice is professionally accepted in
22 other contexts, it cannot be applied in a manner that violates another part of Florida law.

23
24 Later, in October 2020, a trial court issued a final judgment stating as follows regarding
25 appropriate appraisal methodology.

26
27 *“The Property Appraiser failed to prove by a preponderance of the evidence that his*
28 *assessment was arrived at by utilizing methodology complying with section 193.011 and*
29 *professionally accepted appraisal practices. Additionally, the Court finds the Property*
30 *Appraiser’s sole reliance on a cost approach without considering and preparing at least*
31 *one of an income and/or sales comparison approach for the Subject Property type was*
32 *not an appropriate appraisal methodology used in making the assessment.”*

33 See Dillard’s, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).

34 35 **7. A Just Valuation Developed and Reported in Compliance with Overarching** 36 **Standards One through Six and Supported by a Preponderance of the Relevant** 37 **and Credible Evidence**

38
39 For a just valuation to withstand the scrutiny of review, it must be developed and
40 reported in compliance with overarching standards one through six and must be
41 supported by a preponderance of the relevant and credible just valuation evidence.

42

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Petitioner Not Required to Present Opinion or Estimate of Value

The petitioner is not required to provide an opinion or estimate of just value.

No provision of law requires the petitioner to present an opinion or estimate of value.

The Board or special magistrate is not authorized to require a petitioner to provide an opinion or estimate of just value.

The petitioner has the option of choosing whether to present an opinion or estimate of just value.

Presentation of Evidence by the Parties

In a Board or special magistrate hearing, the property appraiser is responsible for presenting relevant and credible evidence in support of his or her determination. See Rule 12D-9.025(3)(a), F.A.C.

An appraisal report shall not be submitted as evidence in a value adjustment board proceeding in any tax year in which the person who performed the appraisal serves as a special magistrate to that county value adjustment board for the same tax year. See Rule 12D-9.025(4)(g), F.A.C.

Under Subsection 194.301(1), F.S., in a hearing on just value, the first issue to be considered is whether the property appraiser establishes a presumption of correctness.

* The property appraiser shall present evidence on this issue first. See Rule 12D-9.024(7), F.A.C.

* While the property appraiser is required to present evidence on this issue first, the Board or special magistrate must allow the petitioner a chance to present evidence on this issue before deciding whether the presumption of correctness is established.

In a Board or special magistrate hearing, the petitioner is responsible for presenting relevant and credible evidence in support of his or her belief that the property appraiser's determination is incorrect. See Rule 12D-9.025(3)(a), F.A.C.

If the property appraiser establishes a presumption of correctness by proving by a preponderance of the evidence that the just value assessment was arrived at by complying with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the petitioner must prove by a preponderance of the evidence that:

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- 1 1. The property appraiser's just valuation does not represent just value; or
- 2
- 3 2. The property appraiser's just valuation is arbitrarily based on appraisal practices that
- 4 are different from the appraisal practices generally applied by the property appraiser
- 5 to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as
- 6 amended by Chapter 2009-121, Laws of Florida (House Bill 521).

7
8 However, if the property appraiser does not establish a presumption of correctness
9 because he or she did not prove by a preponderance of the evidence that the just
10 valuation was arrived at by complying with Section 193.011, F.S., and professionally
11 accepted appraisal practices, including mass appraisal standards, if appropriate, the
12 Board or special magistrate must take one of the two following actions:

- 13
- 14 1. If the record contains competent substantial evidence of just value that cumulatively
- 15 meets the requirements of Section 193.011, F.S., and professionally accepted
- 16 appraisal practices, the Board or special magistrate must establish a revised just
- 17 value; or
- 18
- 19 2. If the record lacks such competent substantial evidence, the Board or special
- 20 magistrate must remand the assessment to the property appraiser with appropriate
- 21 directions with which the property appraiser must comply.

Evaluation of Evidence by the Board or Special Magistrate

22
23
24 Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special
25 magistrate must:

- 26
- 27
- 28 1. Review the evidence presented by the parties;
- 29
- 30 2. Determine whether the evidence presented is admissible;
- 31
- 32 3. Admit the evidence that is admissible;
- 33
- 34 4. Identify the evidence presented to indicate that it is admitted or not admitted; and
- 35
- 36 5. Consider the admitted evidence.

37
38 The term "admitted evidence" means evidence that has been admitted into the record
39 for consideration by the Board or special magistrate. See Rule 12D-9.025(2)(a), F.A.C.

40
41 *"No evidence shall be considered by the board or special magistrate except when*
42 *presented and admitted during the time scheduled for the petitioner's hearing, or at a*

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1 *time when the petitioner has been given reasonable notice.”* See Rule 12D-9.025(4)(a),
2 F.A.C.

3
4 *“If a party submits evidence to the board clerk prior to the hearing, the board or special*
5 *magistrate shall not review or consider such evidence prior to the hearing.”* See Rule
6 12D-9.025(4)(b), F.A.C.

7
8 Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:
9

- 10 1. *“As the trier of fact, the board or special magistrate may independently rule on the*
11 *admissibility and use of evidence.”*
- 12
13 2. *“If the board or special magistrate has any questions relating to the admissibility and*
14 *use of evidence, the board or special magistrate should consult with the board legal*
15 *counsel.”*
- 16
17 3. *“The basis for any ruling on admissibility of evidence must be reflected in the*
18 *record.”*
- 19
20 4. *“The special magistrate may delay ruling on the question during the hearing and*
21 *consult with board legal counsel after the hearing.”*

22
23 The Board or special magistrate shall consider the admitted evidence. See Rule 12D-
24 9.025(1)(d), F.A.C.

25
26 A property owner generally is qualified, on account of ownership, to testify regarding the
27 just value of his or her property. See In re Steffen, 342 B.R. 861 (Bkrtcy. M.D. Fla. 2006).

28
29 NOTE: More information on the admissibility of evidence is presented in Module 4 of
30 this training.

31
32

33 **Sufficiency of Evidence**

34 When applied to evidence, the term “sufficient” is a test of adequacy. See Rule 12D-
35 9.027(6), F.A.C.

36
37 Sufficient evidence is admitted evidence that has enough overall weight, in terms of
38 relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6),
39 F.A.C.

40
41 The Florida Supreme Court stated the following regarding sufficient evidence:
42 *“Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character,*

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1 *weight, or amount, as will legally justify the judicial or official action demanded.*” See
2 Tibbs v. State, 397 So.2d 1120 (Fla. 1981). Also, see Moore v. State, 800 So.2d 747 (Fla. 5th
3 DCA 2001).

4
5 A particular conclusion is justified when the overall weight of the admitted evidence
6 meets the standard of proof that applies to the issue under consideration. See Rule 12D-
7 9.027(6), F.A.C.

8
9 The Board or special magistrate must consider the admitted evidence and determine
10 whether it is sufficiently relevant and credible to reach the “preponderance of the
11 evidence” standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-
12 9.027(5), and 12D-9.027(6), F.A.C.

13
14 Rule 12D-9.027(6), F.A.C., states the following in pertinent part: *“In determining*
15 *whether the admitted evidence is sufficient for a particular issue under consideration,*
16 *the board or special magistrate shall:*

- 17
18 (a) *Consider the relevance and credibility of the admitted evidence as a whole,*
19 *regardless of which party presented the evidence;*
20
21 (b) *Determine the relevance and credibility, or overall weight, of the evidence;*
22
23 (c) *Compare the overall weight of the evidence to the standard of proof;*
24
25 (d) *Determine whether the overall weight of the evidence is sufficient to reach the*
26 *standard of proof; and*
27
28 (e) *Produce a conclusion of law based on the determination of whether the overall*
29 *weight of the evidence has reached the standard of proof.”*
30

31 For administrative reviews of just valuations, “relevant evidence” is evidence that is
32 reasonably related, directly or indirectly, to the statutory criteria that apply to the just
33 valuation of the petitioned property. See Rule 12D-9.025(2)(b), F.A.C.

34
35 * This description means the evidence meets or exceeds a minimum level of
36 relevance necessary to be admitted for consideration, but does not necessarily
37 mean that the evidence has sufficient relevance to legally justify a particular
38 conclusion. See Rule 12D-9.025(2)(b), F.A.C.

39
40 In evaluating the relevance of evidence, the Board or special magistrate must consider,
41 as of the January 1 assessment date, how well the evidence relates to the petitioned

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1 property and to the statutory criteria found in Section 193.011, F.S., and in Section
2 194.301, F.S.

3
4 For administrative reviews of just valuations, “credible evidence” means evidence that is
5 worthy of belief (believable). See *Black’s Law Dictionary, Eighth Edition*, page 596.

6
7 NOTE: More information on evaluating the relevance and credibility of evidence is
8 presented in Module 11 of this training.

9
10 By itself, the property record card is not sufficient evidence for establishing a
11 presumption of correctness for the assessment under Subsection 194.301(1), F.S.

12
13 Materials describing the general appraisal practices of the property appraiser alone,
14 without discussing how those practices were applied to the assessment at issue, are not
15 sufficient to establish a presumption of correctness for the assessment. See Property Tax
16 Informational Bulletin PTO 09-29.

17
18 The approval of an assessment roll by the Department of Revenue is not evidence that
19 a particular assessment was made in compliance with statutory requirements and is not
20 sufficient to establish a presumption of correctness for the assessment. See Property Tax
21 Informational Bulletin PTO 09-29.

22 23 24 **Requirements for Establishing a Presumption of Correctness**

25 A presumption of correctness for the assessment is not established unless the property
26 appraiser proves by a preponderance of the evidence that the property appraiser’s just
27 valuation methodology complies with Section 193.011, F.S., and professionally
28 accepted appraisal practices, including mass appraisal standards, if appropriate. See
29 Rule 12D-9.027(2)(a), F.A.C.

30
31 A presumption of correctness for the assessment is established only when the property
32 appraiser proves by a preponderance of the evidence that the property appraiser’s just
33 valuation methodology complies with Section 193.011, F.S., and professionally
34 accepted appraisal practices, including mass appraisal standards, if appropriate.

35 36 37 **Requirements for Overcoming a Presumption of Correctness**

38 If the property appraiser establishes a presumption of correctness, the petitioner can
39 overcome the presumption of correctness by proving by a preponderance of the
40 evidence one of the following:

41
42 1. The property appraiser’s just valuation does not represent just value; or

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- 1
2 2. The property appraiser's just valuation is arbitrarily based on appraisal practices that
3 are different from the appraisal practices generally applied by the property appraiser
4 to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as
5 amended by Chapter 2009-121, Laws of Florida (House Bill 521).
6

7 If the property appraiser establishes a presumption of correctness and the petitioner
8 does not overcome the presumption of correctness as described above, the
9 assessment stands.
10

Establishing a Revised Just Value or Remanding the Assessment

11
12 If the property appraiser does not establish a presumption of correctness for the
13 assessment, or if the petitioner overcomes the presumption of correctness, the Board or
14 special magistrate must take one of the two following actions:
15

- 16
17 1. If the record contains competent substantial evidence of just value that cumulatively
18 meets the requirements of Section 193.011, F.S., and professionally accepted
19 appraisal practices, the Board or special magistrate must establish a revised just
20 value; or
21
22 2. If the record lacks such competent substantial evidence, the Board or special
23 magistrate must remand the assessment to the property appraiser with appropriate
24 directions with which the property appraiser must comply.
25

26 NOTE: Information on the procedural requirements for remanded assessments is
27 presented in Module 5 of this training.
28
29

Competent Substantial Evidence for Establishing a Revised Just Value

30
31 Competent substantial evidence for establishing a revised just value, as part of an
32 administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:
33

- 34
35 1. Cumulatively meets the criteria of Section 193.011, F.S., and professionally
36 accepted appraisal practices;
37
38 2. Tends to prove (is probative of) just value as of January 1 of the assessment year
39 under review;
40
41 3. Is sufficiently relevant and credible to be accepted as adequate to support (legally
42 justify) the conclusion reached; and

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1
2 4. Otherwise meets all requirements of law.
3
4

5 **Establishment of Revised Just Values in Administrative Reviews**

6 The Board or special magistrate is required to establish a revised just value under either
7 of the two following conditions:
8

- 9 1. The property appraiser does not establish a presumption of correctness for the
10 assessment and the hearing record contains competent substantial evidence for
11 establishing a revised just value as described above; or
12
13 2. The petitioner overcomes a presumption of correctness established by the property
14 appraiser and the hearing record contains competent substantial evidence for
15 establishing a revised just value as described above.
16

17 Within their scope of authority, the Board or special magistrate shall establish a revised
18 just value based upon the competent substantial evidence for establishing a revised just
19 value. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House
20 Bill 521).
21

22 Prior to 2009 and the adoption of House Bill 521, Section 194.301, F.S., provided that
23 the Board may establish the assessment when authorized.
24

25 However, the current statute, effective for administrative reviews beginning in 2009,
26 specifically requires that the Board shall establish the just value when authorized by
27 law. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill
28 521).
29

30 *"In establishing a revised just value, the board or special magistrate is not restricted to*
31 *any specific value offered by one of the parties."* See Rule 12D-9.027(2)(b)3.a., F.A.C.
32

33 In establishing a revised just value when required by law, Boards and special
34 magistrates are not required, and are not authorized, to complete an independent
35 valuation approach.
36

37 The establishment of a revised just value does not require the evidence necessary to
38 complete an independent valuation approach.
39

40 The establishment of a revised just value only requires enough evidence to legally
41 justify making an adjustment to the property appraiser's original just valuation.
42

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1 In establishing a revised just value when required by law, Boards and special
2 magistrates are authorized to make the necessary calculations.
3
4

5 **Sequence of General Procedural Steps**

6 This section sets forth below a sequence of general procedural steps for Boards and
7 special magistrates to follow in administrative reviews of just valuations in order to fulfill
8 the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.
9

10 This sequence of steps applies to: the consideration of evidence, the development of
11 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.
12

13 *“The board or special magistrate shall not be required to make, at any time during a*
14 *hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See
15 Rule 12D-9.025(9), F.A.C.
16

17 *“The board or special magistrate has the discretion to determine whether to make such*
18 *determinations during a hearing or to consider the petition and evidence further after the*
19 *hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.
20

21 In following this sequence of steps, Boards or special magistrates must also meet the
22 requirements of Rule 12D-9.025(1), F.A.C., which are the following:
23

- 24 * Review the evidence presented by the parties;
- 25
- 26 * Determine whether the evidence presented is admissible;
- 27
- 28 * Admit the evidence that is admissible; and
- 29
- 30 * Identify the evidence presented to indicate that it is admitted or not admitted.
31

32 The sequence of general procedural steps presented below is based on Rule 12D-
33 9.027(2), F.A.C. The sequence of general procedural steps is as follows.
34

- 35 1. Consider the admitted evidence presented by the parties.
36
- 37 2. Identify and consider the essential characteristics of the petitioned property based on
38 the admitted evidence and the factors in Section 193.011, F.S.
39
- 40 3. Identify the appraisal methodology used by the property appraiser in developing his
41 or her just valuation of the petitioned property, and consider this appraisal
42 methodology in light of the essential characteristics of the petitioned property.

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 - 41
4. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.
5. Determine whether the property appraiser's appraisal methodology is appropriate and whether the property appraiser established a presumption of correctness for the assessment.
- a) The property appraiser's just valuation methodology is not appropriate and a presumption of correctness is not established unless the admitted evidence proves by a preponderance of the evidence that the property appraiser's just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.
 - b) The property appraiser's just valuation methodology is appropriate and the presumption of correctness is established only when the admitted evidence proves by a preponderance of the evidence that the property appraiser's just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.
6. If the Board or special magistrate determines that a presumption of correctness is established, the Board or special magistrate must then determine whether the admitted evidence proves by a preponderance of the evidence that:
- a) The property appraiser's just valuation does not represent just value; or
 - b) The property appraiser's just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county. In making this determination, the Board or special magistrate may consider any admitted evidence regarding assessments among comparable properties within homogeneous areas or neighborhoods.
7. If the Board or special magistrate determines that one or both of the conditions specified under Step 6 exist, the presumption of correctness is overcome.
8. If the property appraiser does not establish a presumption of correctness, or if the presumption of correctness is overcome, the Board or special magistrate must determine whether the hearing record contains competent, substantial evidence of

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1 just value which cumulatively meets the criteria of Section 193.011, F.S., and
2 professionally accepted appraisal practices.

3
4 a) If the hearing record contains competent, substantial evidence for establishing a
5 revised just value, the Board or an appraiser special magistrate must establish a
6 revised just value based only upon such evidence. In establishing a revised just
7 value, the Board or special magistrate is not restricted to any specific value
8 offered by one of the parties.

9
10 b) If the hearing record lacks competent, substantial evidence for establishing a
11 revised just value, the Board or special magistrate must remand the assessment
12 to the property appraiser with appropriate directions for establishing just value.
13 The property appraiser is required to follow these directions.

14
15 9. If the property appraiser establishes a presumption of correctness as described in
16 Step 5 above and that presumption of correctness is not overcome as described in
17 Step 6 above, the assessment stands.

18 19 20 **Chronological Overview of Subsection 193.011(8), F.S.**

21 In 1963, the initial version of the first seven just valuation factors was enacted, effective
22 January 1, 1964. See Chapter 63-250, Laws of Florida, creating Section 193.021, F.S., which
23 was re-numbered in 1969 as Section 193.011, F.S., by Chapter 69-55, Laws of Florida.

24
25 In 1965, the Florida Supreme Court held that just value was synonymous with fair
26 market value and defined fair market value as: “the amount a purchaser willing but not
27 obliged to buy, would pay to one willing but not obliged to sell.” See Walter v. Schuler, 176
28 So.2d 81 (Fla. 1965).

29
30 NOTE: The eighth just valuation criterion did not exist at the time of Walter v. Schuler.
31 The Legislature can override decisional law. See Dept. of Environmental Protection v.
32 Contractpoint Florida Parks, 986 So.2d 1260, 1269 (Fla. 2008).

33
34 Then, in 1967, the Legislature enacted the first part of the eighth criterion as subsection
35 193.021(8), F.S., in the form presented below. See Chapter 67-167, Laws of Florida,
36 creating Subsection 193.021(8), F.S., which was re-numbered in 1969 as Subsection 193.011(8),
37 F.S., by Chapter 69-55, Laws of Florida.

38
39 *(8) The net proceeds of the sale of the property, as received by the seller, after*
40 *deduction of all of the usual and reasonable fees and costs of the sale, including the*
41 *costs and expenses of financing.*
42

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1 In 1977, the language underlined below was added to subsection 193.011(8), F.S. See
2 Chapter 67-167, Laws of Florida, creating Subsection 193.021(8), F.S., which was re-numbered
3 in 1969 as Subsection 193.011(8), F.S., by Chapter 69-55, Laws of Florida.

4
5 *(8) The net proceeds of the sale of the property, as received by the seller, after*
6 *deduction of all of the usual and reasonable fees and costs of the sale, including the*
7 *costs and expenses of financing, and allowance for unconventional or atypical terms*
8 *of financing arrangements.*

9
10 In 1979, the language underlined below was added to subsection 193.011(8), F.S. See
11 Chapter 79-334, Laws of Florida.

12
13 *(8) The net proceeds of the sale of the property, as received by the seller, after*
14 *deduction of all of the usual and reasonable fees and costs of the sale, including the*
15 *costs and expenses of financing, and allowance for unconventional or atypical terms*
16 *of financing arrangements. When the net proceeds of the sale of any property are*
17 *utilized, directly or indirectly, in the determination of just valuation of realty of the*
18 *sold parcel or any other parcel under the provisions of this section, the property*
19 *appraiser, for the purposes of such determination, shall exclude any portion of such*
20 *net proceeds attributable to payments for household furnishings or other items of*
21 *personal property.*

22
23 Through 2018, no further amendments have been made to subsection 193.011(8), F.S.

24
25 In 1984, when reviewing a 1980 assessment, a federal appellate court found that just
26 value as determined under subsection 193.011(8), F.S., does not represent full market
27 value. See Louisville and Nashville Railroad Co. v. Department of Revenue, State of Fla., 736
28 F.2d 1495 (11th Cir. (Fla.) July 24, 1984).

29
30 In 1982, the Legislature enacted subsection 192.001(18), F.S. See Chapter 82-388, Laws
31 of Florida.

32
33 * This statute provides minimum reporting standards for a property appraiser's
34 complete submission of an assessment roll to the Department of Revenue. These
35 standards include the following for adjustments made by the property appraiser
36 under subsection 193.011(8), F.S:

37
38 *“(18) ‘Complete submission of the roll’ includes, but is not necessarily limited*
39 *to,...an accurate tabular summary by property class of any adjustments made to*
40 *recorded selling prices or fair market value in arriving at assessed value, as*
41 *prescribed by department rule;...” (underlined emphasis added).*
42

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1 Rule 12D-8.002(4), F.A.C., which implements subsection 192.001(18), F.S., was
2 adopted effective September 30, 1982.

3
4 * Rule 12D-8.002(4), F.A.C., provides the following requirement for submittals of
5 preliminary assessment rolls to the Department:
6

7 *“(4) Accompanying the assessment roll submitted to the Executive Director shall be,
8 on a form provided by the Department, an accurate tabular summary by property
9 class of any adjustments made to recorded selling prices or fair market value in
10 arriving at assessed value. Complete, clear, and accurate documentation for each
11 adjustment under section 193.011(8), F.S., exceeding fifteen percent shall
12 accompany this summary detailing how that percentage adjustment was calculated.
13 This documentation shall include individual data for all sales used and a narrative on
14 the procedures used in the study.” (underlined emphasis added)
15*

16 It is important to note that this rule does not, in any way, indicate that property
17 appraisers are required to apply any particular eighth criterion adjustment. Though not
18 required by law, in their actual practice, property appraisers do make across-the-board,
19 eighth criterion adjustments in arriving at their annual just values of real property.
20

21 * The statement in the rule regarding 15 percent is merely a reporting threshold that, if
22 exceeded, would require a documented research study to justify the reported
23 adjustment.
24

25 To facilitate annual reporting of eighth criterion adjustments in accordance with
26 subsection 192.001(18), F.S., and Rule 12D-8.002(4), F.A.C., the Department of
27 Revenue developed Form DR-493 for each property appraiser to use.
28

29 * Each year, using Form DR-493, property appraisers are required to report to the
30 Department the adjustments made by the property appraiser to recorded selling
31 prices or fair market value for each parcel within each of the 18 real property use
32 code groups listed on the form.
33

34 * The Forms DR-493 completed and certified annually by each Property Appraiser are
35 available by clicking on “Assessment Roll Evaluation and Approval” at:
36 <http://floridarevenue.com/property/Pages/DataPortal.aspx>
37
38

Operation of the Eighth Criterion Under Florida Law

39 Subsection 193.011(8), F.S., requires proper consideration of the “net proceeds of
40 sale,” regardless of whether the property was sold, stating in pertinent part:
41
42

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1 *“When the net proceeds of the sale of any property are utilized, directly or indirectly, in*
2 *the determination of just valuation of realty of the sold parcel or any other parcel under*
3 *the provisions of this section...”*
4

- 5 • This provision clearly shows legislative intent for the net proceeds of sale to be
6 applied in just valuations of both sold parcels and unsold parcels.

7
8 In Oyster Pointe Condo. Assoc., Inc. v. Nolte, 524 So.2d 415, 418 (Fla. 1988), the
9 Florida Supreme Court, in holding that timeshare marketing costs were not (under
10 timeshare statutes at that time) part of the “reasonable fees and costs of sale” under
11 section 193.011(8), tellingly stated as follows:
12

13 *“However, as we read section 193.011(8), these costs are not among the “reasonable*
14 *fees and costs of sale” contemplated by the legislature to be excluded from the ad*
15 *valorem appraisal process.” (underlined emphasis added)*
16

- 17 • This holding is notable because it explains legislative intent for the costs of sale to be
18 “*excluded from the ad valorem appraisal process*” without exception.
- 19
20 • This holding aligns with uniform application of the cost of sale factor, without regard
21 to whether the property was sold or to the approach used to value the property.

22
23 Further, a failure to uniformly apply the “net proceeds of sale” factor, to both sold and
24 unsold parcels, would be selective reappraisal.
25

26 The text, *Mass Appraisal of Real Property*, published in 1999 by the International
27 Association of Assessing Officers, page 315, describes the highly undesirable practice
28 of selective reappraisal as follows:
29

30 *“The reliability of sales ratio statistics depends on unsold parcels being appraised in the*
31 *same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio*
32 *results, possibly rendering them useless. Equally important, selective reappraisal of*
33 *sold parcels (“sales chasing”) is a serious violation of basic appraisal uniformity and is*
34 *highly unprofessional.”* (underlined emphasis added)
35

36 Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See
37 Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).
38

39 At least two other court decisions have approved an adjustment for the eighth criterion
40 in just valuations. See Roden v. GAC Liquidating Trust, 462 So.2d 92 (Fla. 2nd DCA 1985).
41 Also, see Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272 (Fla.
42 4th DCA 1995) review denied 673 So.2d 30 (Fla. 1996), stating the following in an example:

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1 *“Subtracting the \$15,000 (cost of sale) from the \$100,000 selling price leaves a net value of*
2 *\$85,000. We find no impropriety in using this approach to valuation.”*

3
4 Under Florida law, property appraisers are authorized, but are not required, to make
5 eighth criterion adjustments in real property just valuations.

6
7 * Though not required by law, in arriving at their annual just values property
8 appraisers make across-the-board adjustments to recorded selling prices or fair
9 market value of real property to reflect their consideration of subsection 193.011(8),
10 F.S. See Department of Revenue Form DR-493 reported each year.

11
12 At least two court decisions have noted the practice of making across-the-board
13 adjustments to real property for the eighth criterion. See Louisville and Nashville Railroad
14 Co. v. Department of Revenue, State of Fla., 736 F.2d 1495 (11th Cir.(Fla.) July 24, 1984), and
15 Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272 (Fla. 4th DCA
16 1995) review denied 673 So.2d 30 (Fla. 1996).

17
18 Each year, property appraisers are required to lawfully report to the Department of
19 Revenue the lawful adjustments the property appraiser made to recorded selling prices
20 or fair market value of real property in consideration of subsection 193.011(8), F.S. See
21 Subsection 192.001(18), F.S.; Rule 12D-8.002(4), F.A.C.; and Form DR-493 reported each year.

22
23 Property appraisers report these adjustments using Form DR-493, and are required to
24 report the adjustments made to recorded selling prices or fair market values within each
25 of the real property use code groups listed on the form.

26
27 * The property appraiser lawfully making and reporting these adjustments is a
28 professionally accepted appraisal practice under section 194.301, F.S.

29
30 * See Forms DR-493 that are certified and reported by property appraisers each year,
31 available by clicking on “Assessment Roll Evaluation and Approval” at:
32 <http://floridarevenue.com/property/Pages/DataPortal.aspx>

33
34 The property appraiser is responsible for lawfully determining whether adjustments for
35 the eighth factor are necessary for just valuation and is responsible for lawfully
36 determining and reporting the amount of the adjustments made.

37
38 The Department of Revenue does not determine whether the property appraiser should
39 make adjustments in consideration of subsection 193.011(8), F.S., and does not
40 determine the amount of any lawful adjustments made by the property appraiser.

41

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1 The Department administers a reporting threshold that requires justifying research,
2 data, analysis, and documentation from the property appraiser under certain conditions.
3 See Rule 12D-8.002(4), F.A.C.

Other Examples of Reporting Across-the-Board Eighth Criterion Adjustments

4
5
6 An example of an actual reported practice of making across-the-board, eighth criterion
7 adjustments is contained in a county property appraiser's 2010 Mass Appraisal Report
8 (authored by Tim Wilmath, MAI, Director of Valuation).

9
10 * This 2010 Mass Appraisal Report was presented as evidence at Board hearings.

11
12 * Below are excerpts from this report explaining how across-the-board, eighth criterion
13 adjustments are made to all property without regard to whether a property was sold
14 and without regard to which valuation approach or technique was used.

15
16 *"The property appraiser considers the 8th criterion by adjusting all sale prices
17 downward by 15% to reflect costs of sale. This downward adjustment is made before
18 the sales are used to value the population of properties."*

19
20 *"Each year, the property appraiser's office submits Form DR-493 to the Department
21 of Revenue, indicating the costs of sale adjustments that were made to sale prices.
22 As indicated below, the...County Property Appraiser's office adjusts recorded sale
23 prices by 15% in arriving at assessed values."*

24
25 *"In the cost/market hybrid approach, the costs of sale adjustment is applied by
26 deducting 15% from sale prices before calculating the appropriate base rate. For
27 example, after deducting land value and extra feature value, the contributory value
28 of an average quality single family home based on 4th quarter sales, is \$54.50 per
29 square foot. Deducting 15% results in a base rate for single family homes of \$46.00
30 per square foot (rounded). This same exercise is conducted for every property type.
31 Once all base rate adjustments have been made, a review of sales ratios is
32 conducted to ensure the assessments are at or below 85% of sale prices."*

33
34 *"A more common approach to deducting the 15% costs of sale, is to apply rates and
35 factors that achieve an assessment ratio of 85% or less. By ensuring that
36 assessments are at or below 85% of sales prices, the 15% costs of sale adjustment
37 is effectively factored into assessments. When there are no sales of a given property
38 type for a given tax year, the rates extracted from Marshall Valuation Service are
39 adjusted to reflect the 15% costs of sale. For all property types, whether sales exist
40 or not, rates are adjusted to reflect the 15% costs of sale."*

41

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1 *“For land valuation, the goal is a land assessment to vacant sale ratio of 85% or*
2 *less. When few or even no vacant land sales exist, ratios are reviewed to ensure the*
3 *estimated land value for any given neighborhood results in an improved*
4 *assessment-to-sale ratio of 85% or less.”*

5
6 *“In the sales comparison approach, sale prices are adjusted by 15% before*
7 *adjustments for various factors are applied. This adjustment is evident in the screen*
8 *shot below.”*

9
10 *“The income models created by our office are designed to arrive at values that are*
11 *approximately 85% or less of gross sale prices of similar properties.”*

12
13 *“For all property types, the property appraiser strives to achieve assessed values*
14 *that are at or below 15% of the prior year's selling prices. This is evident in the graph*
15 *below that illustrates the difference between assessments and selling prices over the*
16 *past 6 years.”*

17
18 In another example of an actual reported practice, a document produced in 2011 by
19 another Florida property appraiser contains the following description of how his office
20 applies across-the-board, eighth criterion adjustments in all three approaches to just
21 valuation of all real property, without regard to whether the property was sold.

22
23 *“In the Office of the...County Property Appraiser, all recorded sales of real property*
24 *are reduced by 15% to reflect the seller's typical “costs of sale.” Thus, only 85% of*
25 *the recorded sales price is recognized by the Property Appraiser. This adjusted*
26 *sales prices (reflecting the seller's “net proceeds”) are then entered into the Property*
27 *Appraiser's Computer Assisted Mass Appraisal (CAMA) program, along with other*
28 *data pertaining to the remaining seven statutory criteria enumerated in section*
29 *193.011, Florida Statutes. From this mass compilation of data involving thousands of*
30 *entries, the Property Appraiser's computer system generates a market value*
31 *assessment for the particular kind of property. This is how value indications of real*
32 *property are developed. The CAMA system, therefore, determines a real property*
33 *assessment which is based upon the consideration and use, where appropriate, of*
34 *all eight factors and complies with the requirements of §193.011.”*

35
36 *“The CAMA-generated assessment is neither a sales comparison approach to*
37 *determining value nor an income capitalization approach to value nor a cost less*
38 *depreciation approach to value. Rather, it is a hybrid of all three appraisal methods*
39 *in which the eighth criteria is properly considered and used when deriving just*
40 *value.”*

41
42

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1 **The Eighth Criterion in Real Property Administrative Reviews**

2 The eighth criterion is one of the statutory criteria in section 193.011, F.S., which
3 Boards and special magistrates must properly consider in administrative reviews of real
4 property just valuations under section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.

5
6 Boards and special magistrates should determine whether the property appraiser has
7 reported to the Department an eighth criterion adjustment for the petitioned real
8 property type and whether the Department has accepted the reported adjustment.

9
10 * This determination can be made by reviewing the Form DR-493 submitted annually
11 by each property appraiser and accepted by the Department.

12
13 * These documents are available by clicking on “Assessment Roll Evaluation and
14 Approval” at:

15 <http://floridarevenue.com/property/Pages/DataPortal.aspx>

16
17 * The property appraiser lawfully making and reporting these adjustments is a
18 professionally accepted appraisal practice under section 194.301, F.S.

19
20 In determining whether the property appraiser’s just valuation complies with section
21 193.011, F.S., and professionally accepted appraisal practices, the Board or special
22 magistrate is authorized to ask related questions to enable the parties to provide the
23 evidence necessary for making this determination. See Rule 12D-9.025(7)(b), F.A.C.

24
25 * To help determine how the property appraiser properly considered the eighth
26 criterion in developing the just value presented by the property appraiser, the Board
27 or special magistrate should ask questions regarding the eighth criterion
28 adjustments reported on the Form DR-493.

29
30 * The Board or special magistrate should also ask questions regarding whether the
31 property appraiser applied, in arriving at his or her just value for the petitioned
32 property, the same eighth criterion adjustment reported for the subject property
33 use code group on the Form DR-493.

34
35 * If, in arriving at his or her just value for the petitioned property, the property
36 appraiser applied an eighth criterion adjustment that is different from the
37 adjustment that he or she applied to parcels in the subject use code group as
38 reported on the Form DR-493, the Board or special magistrate should consider
39 whether the appraisal practice applied to the subject property is arbitrary under
40 subparagraph 194.301(2)(a)3., F.S.

41

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1 * If the reported and accepted Form DR-493 is not voluntarily presented as evidence,
2 the Board or special magistrate should request a copy of such Form DR-493 from
3 the property appraiser.

4
5 NOTE: Under subsection 194.301(1), F.S., a Board petitioner is entitled to a
6 determination by the Board or special magistrate of the appropriateness of the appraisal
7 methodology used in making the assessment.

8
9 * The just value of property must be determined by an appraisal methodology that
10 complies with the criteria of section 193.011, F.S., and professionally accepted
11 appraisal practices.

12
13 Professionally accepted appraisal practices are recognized by the Florida Legislature as
14 a statutory just valuation criterion that must be properly considered by Boards and
15 special magistrates in administrative reviews of assessments. See section 194.301, F.S.

16
17 * Florida law now requires Boards and special magistrates to employ both section
18 193.011, F.S., and professionally accepted appraisal practices, in reviewing just
19 valuations including revising just valuations when required by section 194.301, F.S.

20
21 Boards and special magistrates must avoid using arbitrary appraisal practices as
22 described in subparagraph 194.301(2)(a)3., F.S.

23
24 Below are examples of how the Board or special magistrate should properly consider
25 the eighth criterion in administrative reviews.

Example of When a Board or Special Magistrate Should Make an Eighth Criterion Adjustment to a Just Value Presented by the Property Appraiser

- 26
27
28
29
30 1. The Board or special magistrate determines from the accepted Form DR-493 that
31 the property appraiser has reported and the Department has accepted a certain
32 percentage adjustment for the eighth criterion for all real property within the
33 petitioned property use code group.
34
35 2. The Board or special magistrate determines from the admitted evidence that the
36 property appraiser has not made an eighth criterion adjustment in arriving at the just
37 value presented by the property appraiser for the petitioned property.

38
39 * An example of such evidence would be testimonial or documentary evidence
40 from the property appraiser sufficient to prove that he or she did not make an
41 eighth criterion adjustment in developing the just value presented by the property
42 appraiser for the petitioned property.

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- 1
2 3. In such case, the Board or special magistrate should make, to the just value
3 presented by the property appraiser for the petitioned property, the same eighth
4 criterion adjustment reported by the property appraiser for the subject use code
5 group on Form DR-493.
6

7 NOTE: The Board or special magistrate must avoid double-counting this adjustment.
8 In cases where the property appraiser has already made, in arriving at his or her
9 presented just value for the petitioned property, the same eighth criterion adjustment
10 reported on Form DR-493, the Board or special magistrate must not make an
11 additional eighth criterion adjustment to the property appraiser's presented just value
12 for the petitioned property.
13
14

Example of When a Board or Special Magistrate Should NOT Make an Eighth Criterion Adjustment to a Just Value Presented by the Property Appraiser

- 15
16
17 1. The Board or special magistrate determines from the accepted Form DR-493 that
18 the property appraiser has reported and the Department has accepted a certain
19 percentage adjustment for the eighth criterion for all real property within the
20 petitioned property use code group.
21
22 2. The Board or special magistrate determines from the admitted evidence that the
23 property appraiser has already made, in arriving at the just value presented by the
24 property appraiser for the petitioned property, an eighth criterion adjustment that is
25 equal to the adjustment reported for the subject use code group on Form DR-493.
26
27 * An example of such evidence would be testimonial or documentary evidence
28 from the property appraiser sufficient to prove that he or she did make, in
29 developing the just value presented by the property appraiser for the petitioned
30 property, an eighth criterion adjustment equal to the adjustment reported for the
31 subject use code group on Form DR-493.
32
33 3. The Board or special magistrate must avoid repeating the eighth criterion adjustment
34 that has already been made by the property appraiser in arriving at the just value
35 presented by the property appraiser for the petitioned property.
36
37

Considering the Eighth Criterion and Evidence of a Real Property Sale

38 When considering admitted evidence of an arm's length sale of real property, the Board
39 or special magistrate must determine whether an eighth criterion adjustment should be
40 made to the presented sale price under sections 194.301 and 193.011, F.S.
41
42

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- 1 * The Board or special magistrate must avoid double-counting this adjustment and not
2 repeat any adjustment amount that has already been made to the presented sale
3 price, whether such adjustment amount was made as a dollar amount or a
4 percentage amount.
5
- 6 * The Board or special magistrate is not precluded from making an eighth criterion
7 adjustment to the presented, arm's length sale price when such adjustment would
8 not result in double-counting and when such adjustment is justified by sufficiently
9 relevant and credible evidence.
10
- 11 * In considering whether an eighth criterion adjustment to the presented sale price is
12 justified, the Board or special magistrate must first determine the basis or origin of
13 the presented sale price and determine whether the presented sale price has
14 already been adjusted for the eighth criterion.
15
- 16 * The Board or special magistrate should make, to the presented arm's length sale
17 price, the eighth criterion adjustment that is justified by sufficiently relevant and
18 credible evidence when such adjustment would not result in double-counting.
19
- 20 * In considering whether an eighth criterion adjustment to the presented sale price is
21 justified, the Board or special magistrate should consider the adjustment lawfully
22 made and lawfully reported by the property appraiser on Form DR-493 for the
23 property use code group of the sold property.
24
- 25 * If the Board or special magistrate determines that the arm's length sale price
26 presented by one of the parties is equal to the recorded selling price, the Board or
27 special magistrate should make, to such sale price, a percentage adjustment for the
28 eighth criterion that is equal to the percentage adjustment lawfully made and
29 reported by the property appraiser on Form DR-493 for the property use code group
30 of the sold property.
31
- 32 * If the presented sale price is determined to be different from the recorded selling
33 price and if an eighth criterion adjustment would not result in double-counting, the
34 Board or special magistrate should make, to such presented sale price, an eighth
35 criterion adjustment that results in consistency with the adjustment lawfully made
36 and reported by the property appraiser on Form DR-493 for the property use code
37 group of the sold property.
38

39 NOTE: If a party believes an overall eighth criterion adjustment greater than that
40 reported on Form DR-493 is justified for a particular sale, the party is responsible for
41 presenting relevant and credible evidence in support of that belief.
42

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1 * Then, the Board or special magistrate is responsible for determining, in accordance
2 with law, whether the hearing record contains sufficient evidence to justify a higher
3 overall eighth criterion adjustment to that particular sale price.
4

5 After making an appropriate eighth criterion adjustment, if any, to the presented sale
6 price, the Board or special magistrate should then compare the sold property to the
7 petitioned property in light of the other seven just valuation factors and in accordance
8 with Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House
9 Bill 521).
10

11 * The information above does not suggest or indicate that a Board or special
12 magistrate should “chase sales,” which in this context would mean to automatically
13 adjust the just value of a petitioned property (that was recently sold) to a number that
14 is equal to its adjusted recorded selling price (after an eighth criterion adjustment)
15 while ignoring the other seven just valuation factors.
16

17 * There is no legal requirement that the net proceeds of sale constitute the deciding
18 factor in just valuation. See In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006).
19

20 * The use of net sales price alone, without considering and weighing the other factors,
21 is legally insufficient to constitute compliance with the mandate of Section 193.011,
22 F.S. See Florida Attorney General’s Opinion [AGO 77-106](#), September 29, 1977.
23

24 As stated previously in this training module, the just value of any personal property must
25 be excluded from just valuations of real property.
26

Applicability of the Eighth Criterion in Other Valuation Approaches

28 Provisions of section 194.301, F.S., require that the just valuation standards of section
29 193.011, F.S., which include the eighth criterion, must be followed regardless of:

30 1) whether the property was sold, 2) the valuation approach used, or 3) whether single
31 property appraisal techniques or mass appraisal techniques were used.
32

33 * None of these three items are supported in current law as just valuation criteria.
34

35 The eighth criterion requires proper consideration of the “net proceeds of sale” of the
36 property, regardless of whether an actual sale of the property has occurred.
37

38 * When an actual sale of the property has not occurred, the appraiser must, in arriving
39 at just valuation, place himself or herself in the position of the parties to a
40 hypothetical sale. See Southern Bell Telephone and Telegraph Co. v. Dade County, 275
41 So.2d 4 (Fla. 1973) and Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd
42 DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

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1
2 In long-established and accepted practice, Florida property appraisers routinely apply
3 across-the-board, eighth criterion adjustments in just valuations of real property, without
4 regard to the valuation approach or technique used or whether the property was sold.

5
6 * These adjustments are certified and reported annually by property appraisers on
7 Forms DR-493, which are available on the Department's website at:
8 ftp://sdrftp03.dor.state.fl.us/DR-493_8th_Criterion/

9
10 * At least two court decisions have noted the practice of making across-the-board
11 adjustments to real property for the eighth criterion. See Louisville and Nashville
12 Railroad Co. v. Department of Revenue, State of Fla., 736 F.2d 1495 (11th Cir. (Fla.) July 24,
13 1984), and Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272
14 (Fla. 4th DCA 1995) review denied 673 So.2d 30 (Fla. 1996).

15
16 To not apply, when otherwise warranted, the eighth criterion in an administrative review
17 because the property has not been sold, or based on the valuation approach or
18 technique used, would result in an arbitrary appraisal practice under subparagraph
19 194.301(2)(a)3., F.S.

20
21 The case of Bystrom v. Equitable Life Assurance Society, 416 So.2d 1133 (Fla. 3rd DCA
22 1982) has been cited in support of the proposition that the eighth criterion does not
23 apply to valuation approaches other than the sales comparison approach or unless the
24 subject property was sold.

25
26 * Such proposition is not supported by current law and is contrary to the long-
27 established, professionally accepted appraisal practice employed by property
28 appraisers of making across-the-board, eighth criterion adjustments without regard
29 to whether the property was sold or to which valuation approach is used.

30
31 * The Bystrom case reviewed a 1978 assessment based on 1977 statutes. Later, in
32 1979, the eighth criterion was amended to add a personal property component. See
33 Chapter 79-334, Laws of Florida.

34
35 * The eighth criterion now requires proper consideration of an adjustment for both
36 costs of sale and any personal property. See subsection 193.011(8), F.S.

37
38 * Bystrom reflects no record evidence of the professionally accepted appraisal
39 practice established long ago by property appraisers of making across-the-board,
40 eighth criterion adjustments to all sales and to all parcels regardless of whether a
41 parcel was sold and regardless of which valuation approach or technique is used.
42

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- 1 * Perhaps Bystrom does not reflect such record evidence because it predates the
2 statutory amendment that now requires the property appraiser to report the
3 across-the-board, eighth criterion adjustments made by the property appraiser
4 regardless of whether the property was sold and regardless of the valuation
5 approach used. See Chapter 82-388, Laws of Florida, creating subsection 192.001(18),
6 F.S., and see Rule 12D-8.002(4), F.A.C.
7
- 8 * The Bystrom case is clearly distinguishable from current practice and, thus,
9 generally would not apply in administrative reviews of assessments under
10 Chapter 194, Part 3, F.S.
11
- 12 * The Bystrom holding has been superseded by section 194.301, F.S., which
13 precludes arbitrary just valuation practices and provides that all just valuations must
14 comply with section 193.011, F.S., and professionally accepted appraisal practices.
15
- 16 * The law on which the long-established operation of the eighth criterion is based has
17 changed substantially since the assessment date in Bystrom.
18
- 19 * The facts in Bystrom reveal that the decision was based on “unconventional or
20 atypical financing.”
21
- 22 * Thus, the holding in Bystrom is limited to only factual situations where an
23 adjustment for “unconventional or atypical financing” is the issue. Accordingly,
24 Bystrom would *not preclude* a typical eighth criterion adjustment, in any valuation
25 approach, for “usual and reasonable fees and costs of the sale...”
26
27

Eighth Criterion Applies in Both Mass Appraisal and Single Property Appraisal

- 28 Some have argued that the eighth criterion applies only to the mass appraisal of groups
29 of properties and is inapplicable to a single property analysis such as a Board petition.
30
31
- 32 * Such argument is not supported in fact or law, and is contrary to the long-
33 established, professionally accepted appraisal practice employed by property
34 appraisers of making across-the-board, eighth criterion adjustments without regard
35 to whether mass appraisal or single property appraisal is used.
36
- 37 * Florida law does not provide for any variation in the applicability of the factors in
38 section 193.011, F.S., based on whether mass appraisal or single property appraisal
39 is used.
40
- 41 * To not apply, when otherwise warranted, the eighth criterion in an administrative
42 review because the assessment is being reviewed using single property analysis

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1 would result in an arbitrary appraisal practice under subparagraph 194.301(2)(a)3.,
2 F.S.

- 3
4 * In fact, a Florida appellate court has approved an eighth criterion adjustment made
5 in the just valuation of a single parcel under judicial review. See Roden v. GAC
6 Liquidating Trust, 462 So.2d 92 (Fla. 2nd DCA 1985).

7 8 9 **Properly Considering the Eighth Criterion in Other Valuation Approaches**

10 A previous section in this module addressed the proper consideration of the eighth
11 criterion when comparable sales are used (the sales comparison approach).

- 12
13 * This section addresses the proper consideration of the eighth criterion in the other
14 two valuation approaches, the income capitalization approach and the cost less
15 depreciation approach.

16
17 When considering a value indicator developed by either of these two valuation
18 approaches, the Board or special magistrate must determine whether an eighth criterion
19 adjustment should be made to such value indicator.

- 20
21 * The Board or special magistrate must avoid double-counting this adjustment and
22 must not repeat any adjustment amount that has already been made, whether such
23 adjustment amount was made as a dollar amount or a percentage amount.

- 24
25 * The Board or special magistrate is not precluded from making an eighth criterion
26 adjustment to a value indicator developed by the income capitalization approach or
27 the cost less depreciation approach when such adjustment would not result in
28 double-counting and when such adjustment is justified by sufficient evidence.

- 29
30 * In determining whether to make an eighth criterion adjustment to a value indicator
31 developed by either of these two approaches, the Board or special magistrate must
32 first determine how such value indicator was developed and determine whether the
33 indicator has already been adjusted for the eighth criterion.

- 34
35 * The Board or special magistrate should make, to a value indicator developed by the
36 income capitalization approach or cost less depreciation approach, the eighth
37 criterion adjustment that is justified by sufficient evidence when this adjustment
38 would not result in double-counting.

- 39
40 * In determining whether to make an eighth criterion adjustment to such a value
41 indicator, the Board or special magistrate should consider the adjustment lawfully

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1 made and lawfully reported by the property appraiser on Form DR-493 for the use
2 code group that contains the use code of the subject property.

- 3
- 4 * When double-counting would not result, the Board or special magistrate should
5 make, to a value indicator developed by either of these two approaches, an eighth
6 criterion adjustment that results in consistency with the adjustment lawfully made
7 and lawfully reported by the property appraiser on Form DR-493 for the use code
8 group of the subject property.

9

10 NOTE: If a party believes an overall eighth criterion adjustment greater than that
11 reported on Form DR-493 is justified for a particular value indicator, the party is
12 responsible for presenting relevant and credible evidence in support of that belief.

- 13
- 14 * Then, the Board or special magistrate is responsible for determining, in accordance
15 with law, whether the hearing record contains sufficient evidence to justify a higher
16 overall eighth criterion adjustment to that particular value indicator.

17

18 As stated previously in this training module, the just value of any personal property must
19 be excluded from just valuations of real property.

20

1
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3
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5
6
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Module 7: Administrative Reviews of Classified Use Valuations and Assessed Valuations

Training Module 7 addresses the following topics:

PART 1

Administrative Reviews of Classified Use Valuations

- Overview of Classified Use Valuation
- Statutory Criteria for Valuing Different Types of Classified Property
 - Statutory Criteria for Valuing Agricultural Property
 - Agricultural Property: The Income Approach
 - Agricultural Property: Quarantine and Eradication Programs
 - Agricultural Property: Special Types
 - Pollution Control Devices
 - Noncommercial Recreation and Conservation Lands
 - Historic Property: Sections 193.503 and 193.505, F.S.
 - High-water Recharge Property
 - Working Waterfront Property (Classification Effective in 2010)
 - Renewable Energy Source Devices
- Competent Substantial Evidence for Establishing a Revised Classified Use Value
- The Administrative Review Process for Classified Use Valuations

PART 2

Administrative Reviews of Assessed Valuations

- Statutory Criteria for Assessed Valuation of Limited Increase Property
 - Assessment Increase Limitation for Homestead Real Property
 - Assessment Increase Limitation for Non-Homestead Real Property
 - Differences in Administration Between Sections 193.1554 and 193.1555, F.S.
- Authority for Administrative Reviews of Assessed Valuations
- Competent Substantial Evidence for Establishing a Revised Assessed Value
- The Administrative Review Process for Assessed Valuations

Learning Objectives

After completing this training module, the learner should be able to:

- Identify and apply the definition of classified use value
- Recognize and apply the statutory criteria for classified use valuation
- Identify when the Board or special magistrate is required or is NOT required to make determinations such as findings, conclusions, or decisions
- Identify and apply the sequence of general procedural steps for administrative reviews of classified use valuations

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- 1 • Recognize how to apply the preponderance of the evidence standard of proof in
- 2 administrative reviews of classified use valuations
- 3 • Identify the alternative actions required when a presumption of correctness was not
- 4 established, or was established but later was overcome
- 5 • Identify and apply the elements of the definition of competent substantial evidence
- 6 for establishing a revised classified use value
- 7 • Recognize the conditions under which a Board or special magistrate is required to
- 8 establish a revised classified use value
- 9 • Identify and apply the definition of assessed value
- 10 • Recognize and apply the statutory criteria for the assessed valuation of homestead
- 11 property
- 12 • Recognize and apply the statutory criteria for the assessed valuation of non-
- 13 homestead property
- 14 • Recognize differences in administration of limitations on non-homestead residential
- 15 property with nine or fewer units and other non-homestead property
- 16 • Identify and apply the sequence of general procedural steps for administrative
- 17 reviews of assessed valuations of limited increase properties
- 18 • Recognize how to apply the preponderance of the evidence standard of proof in
- 19 administrative reviews of assessed valuations of limited increase properties
- 20 • Identify and apply the elements of the definition of competent substantial evidence
- 21 for establishing a revised assessed value
- 22 • Recognize the conditions under which a Board or special magistrate is required to
- 23 establish a revised assessed value

PART 1

Overview of Classified Use Valuation

29 “Classified use value” means an annual determination of the value of property that is
30 assessed solely based on character or use, without regard to the property’s highest and
31 best use.

33 Classified use valuations are provided in Section 4(a), (b), and (e), Article VII, of the
34 Florida Constitution (agricultural land, noncommercial recreational land, high-water
35 recharge, conservation land, historic property) and in Section 4(j), Article VII of the State
36 Constitution (working waterfront properties).

38 NOTE: Legislation has not been enacted to implement assessment exclusions for
39 residential improvements for resistance to wind damage under Section 4(i), Article VII,
40 of the Florida Constitution.

42 Except for working waterfront property, the statutory criteria for valuation of classified
43 use property are provided in Chapter 193, Part 2, F.S.

45 The statutory criteria for working waterfront property are set forth in Section 4(j), Article
46 VII, of the Florida Constitution.

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Statutory Criteria for Valuing Different Types of Classified Property

Statutory criteria for the following types of property classifications are presented below.

Types of Property Classifications

- Agricultural Property
- Pollution Control Devices
- Noncommercial Recreational and Conservation Lands
- Historic Property
- High-water Recharge Property
- Working Waterfront Property
- Renewable Energy Source Devices

Statutory Criteria for Valuing Agricultural Property

Under Subsection 193.461(6)(a), F.S., the classified use valuation of agricultural land shall consider the following use factors only:

- * The quantity and size of the property;
- * The condition of the property;
- * The present market value of the property as agricultural land;
- * The income produced by the property;
- * The productivity of the land in its current use;
- * The economic merchantability of the agricultural product; and
- * Such other agricultural factors as may from time to time become applicable and which are reflective of the standard present practices of agricultural use and production.

Agricultural Property: The Income Approach

Under Subsection 193.461(6), F.S., when using the income approach to value agricultural land, the appraiser shall consider the average of the income from the property for the past five years, rather than the income from the last year alone.

- * Irrigation systems, including pumps and motors physically attached to the land, shall be considered part of the acreage under the income approach and not have a separately assessable value.

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1 * Likewise, litter and waste containment structures on poultry and dairy farms shall be
2 considered part of the acreage under the income approach and not have a
3 separately assessable value.
4
5

Agricultural Property: Quarantine and Eradication Programs

6 Under Subsection 193.461(7), F.S., agricultural land taken out of production due to a
7 state or federal quarantine or eradication program shall continue to be classified as
8 agricultural property.
9

10
11 * If the land in the program lies fallow or is used for non-income producing purposes,
12 the land shall have a de minimus value of no more than \$50 per acre.
13

14 * If the land in the program is used for another permissible agricultural use, the land
15 shall be assessed based on that usage.
16

17 * If the land is converted to a non-agricultural use, it will be assessed as non-
18 agricultural property under section 193.011, F.S.
19

20 **Note:** Legislation was enacted in 2018 to amend section 193.461(6)(c), F.S. to provide
21 that screened enclosed structures used in horticultural production for protection from
22 pests and diseases or to comply with state or federal eradication or compliance
23 agreements are a part of the average yields per acre and have no separately
24 assessable value. See Chapter 2018-84, Section 1, Laws of Florida (CS/CS/SB 740).
25

26 **Note:** Legislation was enacted in 2016 to amend section 193.461(7)(a), F.S., to provide
27 that lands classified for assessment purposes as agricultural lands that a state or
28 federal eradication or quarantine program takes out of production will remain agricultural
29 lands for the remainder of the program. Lands that these programs convert to
30 nonincome-producing uses will continue to be assessed at a minimum value of up to
31 \$50 per acre on a single-year assessment methodology.
32

33 This legislation identifies the Citrus Health Response Program as a state or federal
34 eradication or quarantine program. The bill allows land to retain its agricultural
35 classification for five years after the date of execution of a compliance agreement
36 between the landowner and the Department of Agriculture and Consumer Services
37 (DACS) or a federal agency, as applicable, for this program or successor programs.
38

39 Lands under these programs that are converted to fallow or otherwise nonincome-
40 producing uses are still agricultural lands assessed at a minimal value of up to \$50 per
41 acre on a single-year assessment methodology while fallow or used for nonincome-
42 producing purposes. Lands under these programs that are replanted in citrus according
43 to the requirements of the compliance agreement are classified as agricultural lands
44 and are assessed at a minimal value of up to \$50 per acre, on a single-year
45 assessment methodology, during the five-year term of agreement.
46

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1 See Chapter 2016-88, Sections 1 and 5, Laws of Florida (CS/CS/HB 749).

2

3

4 **Agricultural Property: Special Types**

5 In addition to the classified use assessments of agricultural land discussed previously,
6 there are additional provisions in Sections 193.451 and 193.4615, F.S., which address
7 specific kinds of agricultural property.

8

9 These provisions usually deal with the assessment of tangible personal property and
10 instruct that such property should either have no value placed upon it or that it should
11 be valued at salvage value.

12

13 Items with no value:

- 14 * Growing annual crops
- 15 * Nonbearing fruit trees
- 16 * Raw agricultural products (until offered for sale)

17

18 Items valued as salvage:

- 19 * Citrus grading and classification equipment leased from the Department of
20 Agriculture
- 21 * Obsolete agricultural equipment

22

23

24 **Pollution Control Devices**

25 This property classification and its valuation are governed by Section 193.621, F.S.,
26 which provides the following:

27

28 * Pollution control devices installed in manufacturing or industrial plants or installations
29 shall be valued as salvage;

30

31 * Demolition and reconstruction of part of such a facility for the purpose of reducing
32 pollution, and which does not substantially increase the productivity of the facility,
33 shall not increase the facility's assessed value;

34

35 * The property appraiser is authorized to seek a recommendation from the
36 Department of Environmental Protection as to what constitutes pollution control; and

37

38 * The Department of Environmental Protection is authorized to promulgate rules
39 concerning this classification.

40

41 "Salvage value" is defined in rules of the Department of Environmental Protection as
42 follows:

43

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1 *“the estimated fair market value, if any, which may be realized upon the sale or other*
2 *disposition of a pollution control facility when it can no longer be used for the purpose*
3 *for which it was designed.” See Rule 62-8.020, F.A.C.*
4
5

Noncommercial Recreation and Conservation Lands

7 This property classification and its valuation are governed by Section 193.501, F.S.
8

9 To receive this classification, property must be subject to a conservation easement,
10 qualified as environmentally endangered land, designated as conservation land, or used
11 for outdoor recreational or park purposes.
12

13 If the covenant or conveyance extends for more than ten years, the property shall be
14 valued considering no factors other than those relative to its value for the present use
15 as restricted by the covenant or conveyance.
16

17 If the covenant has less than ten years left, the property will be valued at just value
18 considering the restrictions imposed by the covenant.
19
20

Historic Property: Sections 193.503 and 193.505, F.S.

22 Under Subsection 193.503(5), F.S., historic property is to be assessed using the
23 following factors only:
24

- 25 * Quantity and size of property;
- 26 * Condition of property;
- 27 * Present market value as historic property used for commercial or certain nonprofit
28 purposes; and
- 29 * Income produced by the property.
30

31 The historic property addressed under Subsection 193.505(3), F.S., must be valued
32 recognizing the nature and length of the restriction placed on the use of the property
33 under the provisions of the conveyance or covenant.
34
35

High-Water Recharge Property

37 To allow this classification, the county must choose to adopt an ordinance providing for
38 this classification and its valuation. See Subsections 193.625(1) and (5), F.S.
39

40 The county’s ordinance must provide the formula for assessing property that qualifies
41 for this classification. See Subsection 193.625(5)(b), F.S.
42

43 In counties that choose to adopt such ordinance, municipalities may also adopt an
44 ordinance providing for classification and valuation of this property type. See Subsection
45 193.625(5)(d), F.S.
46

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Working Waterfront Property (Classification Effective 2010)

The Florida Constitution sets forth criteria for classifying and valuing working waterfront property.

The provisions of Amendment 6, regarding working waterfronts, have been placed in the Florida Constitution at Article VII, Section (4)(j), effective for the 2010 assessment year. These provisions state as follows:

- “(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:*
- a. Land used predominantly for commercial fishing purposes.*
 - b. Land that is accessible to the public and used for vessel launches into waters that are navigable.*
 - c. Marinas and drystacks that are open to the public.*
 - d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.*
- (2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.”*

The constitutional amendment on working waterfront property is self-executing with authorization for the Legislature to elaborate by general law.

In the 2009 and 2010 sessions, the Legislature considered bills that did not pass but that would have contained guidance for classifying and valuing working waterfront property. These bills would have applied to the 2010 tax year if they had become law.

Amendment 6, creating classification of property used for working waterfronts, is effective for the 2010 year in the absence of legislation.

Renewable Energy Source Devices

- * Legislation enacted in 2013 created section 193.624, F.S., to provide for assessment of a "renewable energy source device" installed on or after January 1, 2013, to new and existing residential real property.
- * When determining the assessed value of real property used for residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered.
- * This requirement is an exception to certain provisions relating to assessment of changes, additions, or improvements in sections 193.155 and 193.1554, F.S.

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1 * This legislation is effective July 1, 2013 and applies to assessments and
2 administrative reviews beginning in 2014. See Chapter 2013-77, Sections 1, 2, and 3,
3 Laws of Florida (HB 277).
4

5 **Note:** Legislation enacted in 2017 amended section 193.624, F.S., to provide that, for
6 nonresidential real property, 80 percent of the just value attributable to a renewable
7 energy source device may not be considered in determining the assessed value of the
8 property; this provision applies to devices installed on nonresidential property on or after
9 January 1, 2018, except in a fiscally constrained county for which application for
10 comprehensive plan amendment or planned unit development zoning is made by
11 December 31, 2017. This change was effective July 1, 2017 and applies to
12 assessments and administrative reviews beginning in 2018. See Chapter 2017-118,
13 Sections 2 and 8, Laws of Florida (CS/SB 90).
14
15

Competent Substantial Evidence for Establishing a Revised Classified Use Value

16
17
18 Competent substantial evidence for establishing a revised classified use value, as part
19 of an administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence
20 that:
21

- 22 1. Cumulatively meets the statutory criteria that apply to the classified use valuation of
23 the petitioned property;
24
- 25 2. Tends to prove (is probative of) classified use value as of January 1 of the
26 assessment year under review;
27
- 28 3. Is sufficiently relevant and credible to be accepted as adequate to support (legally
29 justify) the conclusion reached; and
30
- 31 4. Otherwise meets all requirements of law.
32
33

The Administrative Review Process for Classified Use Valuations

34 Below is a sequence of general procedural steps for Boards and special magistrates to
35 follow in administrative reviews of classified use valuations to fulfill the procedural
36 requirements of Section 194.301, F.S., and Rule 12D-9.027(3), F.A.C.
37

38 This sequence of steps applies to: the consideration of evidence, the development of
39 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.
40

41
42 *“The board or special magistrate shall not be required to make, at any time during a*
43 *hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See
44 Rule 12D-9.025(9), F.A.C.
45

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1 *“The board or special magistrate has the discretion to determine whether to make such*
2 *determinations during a hearing or to consider the petition and evidence further after the*
3 *hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.
4

5 In following this sequence of steps, Boards or special magistrates must also meet the
6 requirements of Rule 12D-9.025(1), F.A.C., which are the following:
7

- 8 * Review the evidence presented by the parties;
- 9
- 10 * Determine whether the evidence presented is admissible;
- 11
- 12 * Admit the evidence that is admissible; and
- 13
- 14 * Identify the evidence presented to indicate that it is admitted or not admitted.
- 15

16 The sequence of general procedural steps presented below is based on Rule 12D-
17 9.027(3), F.A.C.
18

- 19 1. Consider the admitted evidence presented by the parties.
20
- 21 2. Identify and consider the statutory criteria that apply to the classified use valuation of
22 the petitioned property.
23
- 24 3. Identify and consider the essential characteristics of the petitioned property based on
25 the admitted evidence and the statutory criteria that apply to the classified use
26 valuation of the property.
27
- 28 4. Identify the valuation methodology used by the property appraiser in developing the
29 classified use valuation of the petitioned property, and consider this valuation
30 methodology in light of the essential characteristics of the property.
31
- 32 5. Determine whether the admitted evidence proves by a preponderance of the
33 evidence that the property appraiser’s methodology complies with the statutory
34 criteria that apply to the classified use valuation of the property.
35
- 36 6. Determine whether the property appraiser’s classified use valuation methodology is
37 appropriate and whether the property appraiser established a presumption of
38 correctness for the assessment.
39
- 40 a) The property appraiser’s classified use valuation methodology is not appropriate
41 and a presumption of correctness is not established unless the admitted
42 evidence proves by a preponderance of the evidence that the property
43 appraiser’s classified use valuation methodology complies with the statutory
44 criteria that apply to the classified use valuation of the property.
45

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1 b) The property appraiser's classified use valuation methodology is appropriate and
2 the presumption of correctness is established only when the admitted evidence
3 proves by a preponderance of the evidence that the property appraiser's
4 classified use valuation methodology complies with the statutory criteria that
5 apply to the classified use valuation of the property.
6

7 7. If the Board or special magistrate determines that a presumption of correctness is
8 established, the Board or special magistrate must then determine whether the
9 admitted evidence proves by a preponderance of the evidence that:
10

11 a) The property appraiser's classified use valuation does not represent classified
12 use value; or
13

14 b) The property appraiser's classified use valuation is arbitrarily based on valuation
15 practices that are different from the valuation practices generally applied by the
16 property appraiser to comparable property within the same county.
17

18 8. If the Board or special magistrate determines that one or both of the conditions
19 specified under Step 7 exist, the presumption of correctness is overcome.
20

21 9. If the property appraiser does not establish a presumption of correctness, or if the
22 presumption of correctness is overcome, the Board or special magistrate shall
23 determine whether the hearing record contains competent, substantial evidence of
24 classified use value that cumulatively meets the statutory criteria that apply to the
25 classified use valuation of the property.
26

27 a) If the hearing record contains competent, substantial evidence for establishing a
28 revised classified use value, the Board or an appraiser special magistrate shall
29 establish a revised classified use value based only upon such evidence. In
30 establishing a revised classified use value, the Board or special magistrate is not
31 restricted to any specific value offered by one of the parties.
32

33 b) If the hearing record lacks competent, substantial evidence for establishing a
34 revised classified use value, the Board or special magistrate shall remand the
35 assessment to the property appraiser with appropriate directions for establishing
36 classified use value. The property appraiser is required to follow these directions.
37

38 10. If the property appraiser establishes a presumption of correctness as described in
39 Step 6 above and that presumption of correctness is not overcome as described in
40 Step 7 above, the assessment stands.
41
42
43

PART 2

Statutory Criteria for Assessed Valuation of Limited Increase Property

The assessed value of certain types of properties can be less than their just value because of limitations and classifications under the Florida Constitution.

“Assessed value” means an annual determination of the value of:

- * Homestead property as limited pursuant to Section 4(d), Article VII of the State Constitution (lesser of 3 percent or percentage change in consumer price index); or
- * Non-homestead property as limited pursuant to Sections 4(g) and (h), Article VII of the State Constitution (10 percent).

Assessment Increase Limitation for Homestead Real Property

Beginning in 1995, for homestead property there is a limitation on the annual increase in assessed value that is equal to the lesser of 3 percent or the percent change in the consumer price index. See Rules 12D-8.0061 through 12D-8.0064, F.A.C.

Homestead real property shall be assessed at just value on the January 1 following a change of ownership. See Section 193.155, F.S.

Under Section 193.155(3)(a), F.S., a change of ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, with several enumerated exceptions. More information on this topic is in Module 9.

Note: Legislation enacted in 2021 amended section 193.155(4)(b), F.S., to provide that changes, additions, or improvements that replace all or a portion of homestead property, including ancillary improvements, damaged or destroyed by misfortune or calamity shall be assessed upon substantial completion subject to the assessment increase limitation using the homestead property's assessed value as of the January 1 immediately before the date on which the damage or destruction was sustained, when: (a. the square footage of the homestead property as changed or improved does not exceed 110 percent of the square footage of the homestead property before the damage or destruction; or (b. the total square footage of the homestead property as changed or improved does not exceed 1,500 square feet. See Chapter 2021-31, Sections 2 and 7, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable retroactively to assessments made on or after January 1, 2021.

Assessment Increase Limitation for Non-Homestead Real Property

Beginning in 2009, for non-homestead property there is a 10 percent limitation on the annual increase in assessed value.

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1 The types of property eligible for the 10 percent cap are provided under Section
2 193.1554, F.S., and Section 193.1555, F.S.

3
4 Section 193.1554, F.S., relates to the assessment of non-homesteaded residential
5 property that contains nine or fewer dwelling units that does not receive a homestead
6 exemption under Section 196.031, F.S., including vacant property zoned and platted for
7 residential use.

8
9 Section 193.1555, F.S., relates to residential property with 10 or more units and to non-
10 residential real property.

11
12 “Non-residential real property” means real property that is not subject to the assessment
13 limitations set forth in subsection 4(a), (b), (c), (d), or (g), Article VII of the Florida
14 Constitution. This involves property classified agricultural, high-water recharge, non-
15 commercial recreational, conservation, and homestead limited increase property.

16
17 When ownership or control of the property changes, the property is subject to
18 reassessment at just value.

19
20 A person or entity that owns non-homestead property subject to receiving the 10
21 percent assessment increase limitation under Sections 193.1554 or 193.1555, F.S.,
22 must notify the property appraiser of the county where the property is located of any
23 change of ownership or control as defined in Sections 193.1554(5) and 193.1555(5),
24 F.S. See section 193.1556, F.S.

25
26 Rule 12D-8.00659, F.A.C., (Notice of Change of Ownership or Control of Non-
27 Homestead Property) contains detailed provisions explaining the change in ownership
28 and control. Forms are included for the owner to notify the property appraiser as
29 provided in sections 193.1554 and 193.1555, F.S.

30
31 NOTE: In Orange County Property Appraiser v. Sommers, 84 So.3d 1277 (Fla. 5th DCA
32 2012), the court held that when residential property changes from homestead to non-
33 homestead, but ownership does not change, the ten percent cap for non-homestead
34 property cannot be applied to the assessed value from the previous homestead cap.
35 Rather, in the year following the change from homestead to non-homestead status, the
36 new assessed value for the property (as non-homestead) must be equal to just value.
37 Then, the new assessed value must be the base to which the ten percent cap for non-
38 homestead property can be applied in future years. This is also addressed in 2012
39 legislation. See Chapter 2012-193, Sections 6 and 7, Laws of Florida.

40
41 **Note:** Legislation enacted in 2021 amended section 193.1554(6)(b), F.S., to provide
42 that changes, additions, or improvements that replace all or a portion of nonhomestead
43 residential property, including ancillary improvements, damaged or destroyed by
44 misfortune or calamity shall be assessed upon substantial completion subject to the
45 assessment increase limitation using the nonhomestead property’s assessed value as
46 of the January 1 prior to the date on which the damage or destruction was sustained,

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1 when (a. the square footage of the property as changed or improved does not exceed
2 110 percent of the square footage of the property before the damage or destruction, or
3 (b. the total square footage of the property as changed or improved does not exceed
4 1,500 square feet. See Chapter 2021-31, Sections 4 and 7, Laws of Florida, (HB 7061),
5 effective July 1, 2021 and applicable retroactively to assessments made on or after January 1,
6 2021.

7
8 **Note:** Legislation enacted in 2021 amended section 193.1555(6)(b), F.S., to provide
9 that changes, additions, or improvements that replace all or a portion of real property,
10 including ancillary improvements, damaged or destroyed by misfortune or calamity shall
11 be assessed upon substantial completion subject to the assessment increase limitation
12 using the nonresidential real property's assessed value as of the January 1 prior to the
13 date on which the damage or destruction was sustained, when (a. the square footage of
14 the property as changed or improved does not exceed 110 percent of the square
15 footage of the property before the damage or destruction, or (b. the total square footage
16 of the property as changed or improved does not exceed 1,500 square feet. See Chapter
17 2021-31, Sections 6 and 7, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable
18 retroactively to assessments made on or after January 1, 2021.
19
20

Differences in Administration Between Sections 193.1554 and 193.1555, F.S.

21
22
23 The administration of Sections 193.1554 and 193.1555, F.S., is similar but has four
24 main differences. These differences are:

- 25
26 1. For residential with nine or fewer dwelling units Section 193.1554, F.S., there is no
27 change in ownership if the transfer is between husband and wife, including a transfer
28 to a surviving spouse or a transfer due to a dissolution of marriage.
29
30 * This provision is not in Section 193.1555, F.S.
31
32 2. For residential with 10 units or more and nonresidential, Section 193.1555, F.S.,
33 property must be reassessed at just value if there is a "qualifying" improvement,
34 meaning any substantially completed improvement that increases the just value of
35 the property by at least 25 percent.
36
37 * "Improvement" is an addition or change to land or buildings that increases their
38 value and is more than a repair or a replacement.
39
40 * This provision is not in Section 193.1554, F.S.
41
42 3. Under Section 193.1554, F.S., changes, additions, or improvements include
43 improvements to common areas or other property that directly benefit the property.
44
45 * Such changes are assessed at just value and apportioned among the benefitting
46 parcels.

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1
2 * This provision is not in Section 193.1555, F.S.
3
4

Authority for Administrative Reviews of Assessed Valuations

5
6 It is clear under Section 194.301, F.S., amended by HB 521, that the Board or special
7 magistrate may consider petitions on the current year assessed value. Section
8 194.301(1), F.S. states:
9

10 *“... if the appraiser proves by a preponderance of the evidence that the*
11 *assessment was arrived at by complying with s. 193.011, any other applicable*
12 *statutory requirements relating to classified use values or assessment caps, ...”*
13

14 Section 194.301(2)(a), F.S., states the Board or special magistrate may determine:
15

16 *“... that the assessed value:*

17 *1. Does not represent the just value of the property after taking into account any*
18 *applicable limits on annual increases in the value of the property;...”*
19

20 These provisions refer to the calculation of limited increase property and refer to the
21 statutory criteria applicable to assessment of such properties. Also, see Rule 12D-
22 9.027(3)(a), (b), and (d), F.A.C.
23

24 Thus, it is clear that a petitioner may appeal an assessed valuation for the current year
25 under the statutory criteria pertaining to calculation of assessed value.
26
27

Competent Substantial Evidence for Establishing a Revised Assessed Value

28
29 Competent substantial evidence for establishing a revised assessed value, as part of an
30 administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:
31
32

- 33 1. Cumulatively meets the statutory criteria that apply to the assessed valuation of the
34 petitioned property;
- 35
36 2. Tends to prove (is probative of) assessed value as of January 1 of the assessment
37 year under review;
- 38
39 3. Is sufficiently relevant and credible to be accepted as adequate to support (legally
40 justify) the conclusion reached; and
- 41
42 4. Otherwise meets all requirements of law.
43
44

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The Administrative Review Process for Assessed Valuations

Below is a sequence of general procedural steps for Boards and special magistrates to follow in administrative reviews of assessed valuations of limited increase property to fulfill the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(3), F.A.C.

This sequence of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

“The board or special magistrate shall not be required to make, at any time during a hearing, any oral or written finding, conclusion, decision, or reason for decision.” See Rule 12D-9.025(9), F.A.C.

“The board or special magistrate has the discretion to determine whether to make such determinations during a hearing or to consider the petition and evidence further after the hearing and then make such determinations.” See Rule 12D-9.025(9), F.A.C.

In following this sequence of steps, Boards or special magistrates must also meet the requirements of Rule 12D-9.025(1), F.A.C., listed following:

- a) Review the evidence presented by the parties;
- b) Determine whether the evidence presented is admissible;
- c) Admit the evidence that is admissible; and
- d) Identify the evidence presented to indicate that it is admitted or not admitted.

The sequence of general procedural steps presented below is based on Rule 12D-9.027(3), F.A.C.

1. Consider the admitted evidence presented by the parties.
2. Identify and consider the statutory criteria that apply to the assessed valuation of the petitioned property.
3. Identify and consider the essential characteristics of the petitioned property based on the admitted evidence and the statutory criteria that apply to the assessed valuation of the property.
4. Identify the valuation methodology used by the property appraiser in developing the assessed valuation of the petitioned property, and consider this valuation methodology in light of the essential characteristics of the property.

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- 1 5. Determine whether the admitted evidence proves by a preponderance of the
2 evidence that the property appraiser's methodology complies with the statutory
3 criteria that apply to the assessed valuation of the property.
4
- 5 6. Determine whether the property appraiser's assessed valuation methodology is
6 appropriate and whether the property appraiser established a presumption of
7 correctness for the assessment.
8
 - 9 a) The property appraiser's assessed valuation methodology is not appropriate and
10 a presumption of correctness is not established unless the admitted evidence
11 proves by a preponderance of the evidence that the property appraiser's
12 assessed valuation methodology complies the statutory criteria that apply to the
13 assessed valuation of the property.
14
 - 15 b) The property appraiser's assessed valuation methodology is appropriate and the
16 presumption of correctness is established only when the admitted evidence
17 proves by a preponderance of the evidence that the property appraiser's
18 assessed valuation methodology complies with the statutory criteria that apply to
19 the assessed valuation of the property.
20
- 21 7. If the Board or special magistrate determines that a presumption of correctness is
22 established, the Board or special magistrate must then determine whether the
23 admitted evidence proves by a preponderance of the evidence that:
24
 - 25 a) The property appraiser's assessed valuation does not represent assessed value;
26 or
27
 - 28 b) The property appraiser's assessed valuation is arbitrarily based on valuation
29 practices that are different from the valuation practices generally applied by the
30 property appraiser to comparable property within the same county.
31
- 32 8. If the Board or special magistrate determines that one or both of the conditions
33 specified under Step 7 exist, the presumption of correctness is overcome.
34
- 35 9. If the property appraiser does not establish a presumption of correctness, or if the
36 presumption of correctness is overcome, the Board or special magistrate shall
37 determine whether the hearing record contains competent, substantial evidence of
38 assessed value that cumulatively meets the statutory criteria that apply to the
39 assessed valuation of the property.
40
 - 41 a) If the hearing record contains competent, substantial evidence for establishing a
42 revised assessed value, the Board or an appraiser special magistrate shall
43 establish a revised assessed value based only upon such evidence. In
44 establishing a revised assessed value, the Board or special magistrate is not
45 restricted to any specific value offered by one of the parties.
46

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- 1 b) If the hearing record lacks competent, substantial evidence for establishing a
2 revised assessed value, the Board or special magistrate shall remand the
3 assessment to the property appraiser with appropriate directions for establishing
4 assessed value. The property appraiser is required to follow these directions.
5
- 6 10. If the property appraiser establishes a presumption of correctness as described in
7 Step 6 above and that presumption of correctness is not overcome as described in
8 Step 7 above, the assessment stands.
9

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Module 8: Administrative Reviews of Tangible Personal Property Just Valuations

33 **Training Module 8 addresses the following topics:**

- 34 • Statutory Law Beginning in 2009 (See HB 521)
- 35 • Standard of Proof for Administrative Reviews
- 36 • Scope of Authority for Administrative Reviews
- 37 • Legal Limitations on Administrative Reviews
- 38 • The Florida Tangible Personal Property Appraisal Guidelines
- 39 • Florida Information on Appraisal Development
- 40 • Definition of Tangible Personal Property (TPP)
- 41 • Exemptions for Tangible Personal Property
- 42 • Requirement for Taxpayers to File TPP Returns
- 43 • The Eight Factors of Just Valuation in Section 193.011, F.S.
- 44 • The Seven Overarching Standards for Valid Just Valuations
- 45 • Petitioner Not Required to Present Opinion or Estimate of Value
- Presentation of Evidence by the Parties
- Evaluation of Evidence by the Board or Special Magistrate
- Sufficiency of Evidence
- Requirements for Establishing a Presumption of Correctness
- Requirements for Overcoming a Presumption of Correctness
- Establishing a Revised Just Value or Remanding the Assessment
- Competent Substantial Evidence for Establishing a Revised Just Value
- Establishment of Revised Just Values in Administrative Reviews
- Sequence of General Procedural Steps
- Operation of the Eighth Criterion Under Florida Law
- The Eighth Criterion in Reviews of Tangible Personal Property

33 **Learning Objectives**

34 After completing this training module, the learner should be able to:

- 35
- 36 • Identify the 2009 changes enacted in statutory law (HB 521)
 - 37 • Distinguish between who does appraisal development and who does NOT
 - 38 • Identify legal provisions on the Tangible Personal Property Appraisal Guidelines
 - 39 • Identify legal provisions that represent limitations on the discretion of property
 - 40 appraisers
 - 41 • Recognize that the factor in Section 193.011(8), F.S., must be properly considered in
 - 42 the just valuation of tangible personal property (TPP)
 - 43 • Recognize the four components of the definition of personal property
 - 44 • Identify how the Florida Supreme Court has addressed intangible personal property
 - 45 in the just valuation of tangible personal property

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- 1 • Recognize the requirement that personal property types other than TPP must be
- 2 excluded from just valuations of TPP
- 3 • Distinguish between appraisal development and administrative reviews
- 4 • Recognize and apply the scope of authority for administrative reviews
- 5 • Identify the items that a Board or special magistrate may consider in addition to
- 6 admitted evidence
- 7 • Recognize and apply the definition of tangible personal property (TPP)
- 8 • Identify the requirements for filing a TPP return (Form DR-405)
- 9 • Recognize the types of information required on a filed return (Form DR-405)
- 10 • Identify how the property appraiser may use a filed TPP return
- 11 • Recognize the link between the requirement to file a TPP return with the property
- 12 appraiser and the right to file a petition with the Board
- 13 • Identify the eight factors of just valuation in Section 193.011, F.S.
- 14 • Recognize the legal standards for consideration of the just valuation factors
- 15 • Identify the provisions of Section 193.016, F.S., regarding the property appraiser's
- 16 consideration of the previous year's Board-adjusted assessment
- 17 • Recognize how the Florida Supreme Court has addressed Section 193.016, F.S.
- 18 • Identify the applicable standard of proof, its definition, and how it is applied
- 19 • Identify standards of proof that do NOT apply in administrative reviews
- 20 • Recognize that a petitioner is NOT required to present an opinion of value
- 21 • Understand the order of presentation of evidence
- 22 • Identify and apply the steps for evaluating evidence in administrative reviews
- 23 • Recognize and apply the provisions for ruling on the admissibility of evidence
- 24 • Identify and apply the definitions of relevant evidence and credible evidence
- 25 • Recognize and apply the standards for determining the sufficiency of evidence
- 26 • Identify types of information that are NOT sufficient evidence for establishing a
- 27 presumption of correctness
- 28 • Recognize the requirements for establishing a presumption of correctness
- 29 • Recognize the requirements for overcoming a presumption of correctness
- 30 • Identify the alternative actions required when a presumption of correctness was not
- 31 established, or was established but later was overcome
- 32 • Identify and apply the elements of the definition of competent substantial evidence
- 33 for establishing a revised assessment
- 34 • Recognize the conditions under which a Board or special magistrate is required to
- 35 establish a revised just value
- 36 • Identify legal limitations on administrative reviews
- 37 • Apply the sequence of general procedural steps for administrative reviews of just
- 38 valuations
- 39 • Identify when the Board or special magistrate is required or is NOT required to make
- 40 determinations such as findings, conclusions, or decisions
- 41 • Recognize that the factor in Section 193.011(8), F.S., must be properly considered in
- 42 administrative reviews of just valuations of tangible personal property, regardless of
- 43 whether an actual sale of the property has occurred
- 44
- 45
- 46
- 47

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1 **Statutory Law Beginning in 2009 (See HB 521)**

2 An important change to Florida Statutes was passed in the 2009 legislative session and
3 then approved by the Governor on June 4, 2009. See Section 194.301, Florida
4 Statutes, as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

5
6 The complete text of this current legislation is presented following:

7
8 *Be It Enacted by the Legislature of the State of Florida:*

9 10 Section 1.

11 *Section 194.301, Florida Statutes, is amended to read:*

12 *194.301 Challenge to ad valorem tax assessment.—*

13
14 *(1) In any administrative or judicial action in which a taxpayer challenges an ad valorem*
15 *tax assessment of value, the property appraiser's assessment is presumed correct if the*
16 *appraiser proves by a preponderance of the evidence that the assessment was arrived*
17 *at by complying with s. 193.011, any other applicable statutory requirements relating to*
18 *classified use values or assessment caps, and professionally accepted appraisal*
19 *practices, including mass appraisal standards, if appropriate. However, a taxpayer who*
20 *challenges an assessment is entitled to a determination by the value adjustment board*
21 *or court of the appropriateness of the appraisal methodology used in making the*
22 *assessment. The value of property must be determined by an appraisal methodology that*
23 *complies with the criteria of s. 193.011 and professionally accepted appraisal practices.*
24 *The provisions of this subsection preempt any prior case law that is inconsistent with this*
25 *subsection.*

26
27 *(2) In an administrative or judicial action in which an ad valorem tax assessment is*
28 *challenged, the burden of proof is on the party initiating the challenge.*

29
30 *(a) If the challenge is to the assessed value of the property, the party initiating the*
31 *challenge has the burden of proving by a preponderance of the evidence that the*
32 *assessed value:*

33
34 *1. Does not represent the just value of the property after taking into account any*
35 *applicable limits on annual increases in the value of the property;*

36
37 *2. Does not represent the classified use value or fractional value of the property if the*
38 *property is required to be assessed based on its character or use; or*

39
40 *3. Is arbitrarily based on appraisal practices that are different from the appraisal practices*
41 *generally applied by the property appraiser to comparable property within the same*
42 *county.*

43
44 *(b) If the party challenging the assessment satisfies the requirements of paragraph (a),*
45 *the presumption provided in subsection (1) is overcome and the value adjustment board*
46 *or the court shall establish the assessment if there is competent, substantial evidence of*
47 *value in the record which cumulatively meets the criteria of s. 193.011 and professionally*

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1 *accepted appraisal practices. If the record lacks such evidence, the matter must be*
2 *remanded to the property appraiser with appropriate directions from the value adjustment*
3 *board or the court, and the property appraiser must comply with those directions.*

4
5 *(c) If the revised assessment following remand is challenged, the procedures described*
6 *in this section apply.*

7
8 *(d) If the challenge is to the classification or exemption status of the property, there is no*
9 *presumption of correctness and the party initiating the challenge has the burden of*
10 *proving by a preponderance of the evidence that the classification or exempt status*
11 *assigned to the property is incorrect.*

12 13 Section 2.

14 *(1) It is the express intent of the Legislature that a taxpayer shall never have the burden*
15 *of proving that the property appraiser's assessment is not supported by any reasonable*
16 *hypothesis of a legal assessment. All cases establishing the every-reasonable-*
17 *hypothesis standard were expressly rejected by the Legislature on the adoption of chapter*
18 *97-85, Laws of Florida. It is the further intent of the Legislature that any cases published*
19 *since 1997 citing the every-reasonable-hypothesis standard are expressly rejected to the*
20 *extent that they are interpretative of legislative intent.*

21
22 *(2) This section is intended to clarify existing law and apply retroactively.*

23 24 Section 3.

25 *This act shall take effect upon becoming a law and shall first apply to assessments in*
26 *2009.*

27 *Approved by the Governor June 4, 2009.*

28 *Filed in Office Secretary of State June 4, 2009.*

29 *Ch. 2009-121 LAWS OF FLORIDA Ch. 2009-121*

30
31 This law is now in effect and applies to the administrative review of assessments
32 beginning with 2009 assessments.

33
34 * Procedural steps for implementing this 2009 legislation for administrative reviews of
35 just valuations are presented later in this training module.

36
37 Board attorneys and special magistrates are responsible for ensuring that this important
38 legislation is implemented for all administrative reviews of assessments.

39
40 This 2009 legislation lowered the standard of proof for assessment challenges, greatly
41 increased the level of diligence for developing and reporting just valuations, and added
42 the following four new determinative standards for developing, reporting, and reviewing
43 just valuations: 1) compliance with professionally accepted appraisal practices; 2)
44 avoidance of arbitrarily different appraisal practices within groups of comparable
45 property within the same county; 3) avoidance of superseded case law; and 4) correct
46 application of an appropriate appraisal methodology. These changes are explained in a
47 following section titled "The Seven Overarching Standards for Valid Just Valuations."

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1
2 The law now provides a lower standard of proof, called “preponderance of the
3 evidence,” for determining whether the assessment is incorrect.

4
5 * “Preponderance of the evidence” is a standard (level) of proof that means “greater
6 weight of the evidence” or “more likely than not.”

7
8 In determining whether the assessment is incorrect, Boards and special magistrates
9 must not use any standard of proof other than the preponderance of the evidence
10 standard, as provided in Section 194.301, F.S., as amended by Chapter 2009-121,
11 Laws of Florida (House Bill 521).

12
13 Higher standards of proof no longer apply. The higher standard of proof called “clear
14 and convincing evidence” no longer applies in the administrative review of assessments
15 and must not be used by Boards or special magistrates. See Section 194.301, F.S., as
16 amended by Chapter 2009-121, Laws of Florida (House Bill 521).

17
18 *“It is the express intent of the Legislature that a taxpayer shall never have the burden of*
19 *proving that the property appraiser’s assessment is not supported by any reasonable*
20 *hypothesis of a legal assessment.”* See Subsection 194.3015(1), F.S., as created by Chapter 2009-
21 121, Laws of Florida (House Bill 521).

22 23 24 **Standard of Proof for Administrative Reviews**

25 In administrative reviews, Boards or special magistrates must consider admitted
26 evidence and then compare the weight of the evidence to a “standard of proof” to make
27 a determination on an issue under review.

28
29 Generally, the term “evidence” means something (including testimony, documents, and
30 tangible objects) that tends to prove or disprove the existence of a disputed fact. See
31 *Black’s Law Dictionary, Eighth Edition*, page 595.

32
33 “Standard of proof” means the level of proof needed by the Board or special magistrate
34 to reach a particular conclusion. See Rule 12D-9.027(5), F.A.C.

35
36 The standard of proof that applies in administrative reviews is called “preponderance of
37 the evidence,” which means “greater weight of the evidence.” See Rule 12D-9.027(5),
38 F.A.C.

39
40 Also, the Florida Supreme Court has defined “preponderance of the evidence” as
41 “greater weight of the evidence” or evidence that “more likely than not” tends to prove a
42 certain proposition. See Gross v. Lyons, 763 So.2d 276 (Fla. 2000).

43
44 “Greater weight of the evidence” means the more persuasive and convincing force and
45 effect of the entire evidence in the case. See Florida Standard Civil Jury Instructions,
46 approved for publication by the Florida Supreme Court.

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1 The Board or special magistrate must determine whether the admitted evidence is
2 sufficiently relevant and credible to reach the “preponderance of the evidence” standard
3 of proof.

4
5 This standard of proof is the scale by which the Board or special magistrate measures
6 the weight (relevance and credibility) of the admitted evidence in making a
7 determination.

8
9

10 **Scope of Authority for Administrative Reviews**

11 The administrative review of just valuations is performed by Boards or special
12 magistrates under Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10, and
13 12D-16, F.A.C.; and other provisions of Florida law.

14
15 The administrative review process performed by Boards and special magistrates is
16 separate and different from the mass appraisal development process performed by
17 property appraisers.

18
19 In administrative reviews, Boards and special magistrates are not authorized to perform
20 appraisal development and must not perform appraisal development.

21
22 In administrative reviews, Boards and special magistrates are not authorized to perform
23 any independent factual research into attributes of the subject property or any other
24 property.

25
26 Boards and special magistrates must follow the provisions of law on the administrative
27 review of assessments. See Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10,
28 and 12D-16, F.A.C.; and other provisions of Florida law.

29
30 In establishing revised just values when required by law, Boards and special
31 magistrates are bound by the same standards and practices as property appraisers. See
32 Rule 12D-10.003(1), F.A.C., treated favorably in Bystrom v. Equitable Life Assurance Society,
33 416 So.2d 1133 (Fla. 3d DCA 1982), and see Section 194.301, F.S., as amended by Chapter
34 2009-121, Laws of Florida (House Bill 521).

35
36 * However, when observing this requirement, Boards and special magistrates must
37 act within their scope of authority.

38
39 The effective date of administrative review is January 1 each year, and the property
40 interest to be reviewed is the unencumbered fee simple estate.

41
42 The Board or special magistrate has no authority to develop original just valuations of
43 property and may not take the place of the property appraiser, but shall revise the
44 assessment when required under Florida law. See Rule 12D-10.003(1), F.A.C., and Section
45 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

46

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1 * See Simpson v. Merrill, 234 So.2d 350 (Fla. 1970), stating that a court may not take the place
2 of the property appraiser but may reduce the assessment.

3
4 * Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding
5 that the determination of the weight to be accorded evidence rests upon the trial judge, as
6 trier of facts, and if competent substantial evidence is introduced demonstrating the
7 assessment to be erroneous, the judge may reduce that assessment.

8
9 The Board or special magistrate is required to revise the assessment under the
10 conditions specified in Section 194.301, F.S., as amended by Chapter 2009-121, Laws
11 of Florida (House Bill 521). These conditions are described in detail later in this module.

12
13 *“In establishing a revised just value, the board or special magistrate is not restricted to
14 any specific value offered by one of the parties.”* See Rule 12D-9.027(2)(b)3.a., F.A.C.

15
16 * Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding
17 that the reviewing judge could arrive at a value that was different from either of the values
18 presented by the parties when the judge’s value was based on competent substantial evidence
19 in the record.

20
21 The Board or special magistrate is authorized to make calculations, and to make an
22 adjustment to the property appraiser’s value based on competent substantial evidence
23 of just value in the record. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws
24 of Florida (House Bill 521), and see Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977),
25 stating that when the record contains competent substantial evidence of value the court may
26 make necessary value calculations or adjustments based on such evidence.

27
28 If the hearing record does not contain competent substantial evidence of just value, the
29 Board or special magistrate cannot substitute its own independent judgment. See Section
30 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see
31 Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977), stating that in the absence of
32 competent substantial evidence of value the court cannot substitute its own independent
33 judgment.

34
35 The Board or special magistrate has no authority to adjust assessments across-the-
36 board. Their authority to review just valuations is limited to the review of individual
37 petitions filed. See Spooner v. Askew, 345 So.2d 1055 (Fla. 1976).

38
39 The Board has the limited function of reviewing and correcting individual assessments
40 developed by the property appraiser. See Bath Club, Inc. v. Dade County, 394 So.2d 110
41 (Fla. 1981).

42
43 The Board has no authority to review, on its own volition, a decision of the property
44 appraiser to deny an exemption. See Redford v. Department of Revenue, 478 So.2d 808
45 (Fla. 1985).

46

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1 *“The powers, authority, duties and functions of the board, insofar as they are*
2 *appropriate, apply equally to real property and tangible personal property (including*
3 *taxable household goods).” See Rule 12D-10.003(2), F.A.C.*

4
5 In administrative reviews, Boards and special magistrates are not authorized to consider
6 any evidence except evidence properly presented by the parties and properly admitted
7 into the record for consideration. See Rule 12D-9.025(4)(a), F.A.C.

8
9 In addition to admitted evidence, Boards and special magistrates are authorized to
10 consider only the following items in administrative reviews.

- 11
12 1. Legal advice from the Board legal counsel;
- 13
14 2. Information contained or referenced in the Department’s Uniform Policies and
15 Procedures Manual and Accompanying Documents;
- 16
17 3. Information contained or referenced in the Department’s training for value
18 adjustment boards and special magistrates; and
- 19
20 4. Professional texts that pertain only to professionally accepted appraisal practices
21 that are not inconsistent with Florida law.

Legal Limitations on Administrative Reviews

22
23
24
25 No evidence shall be considered by the Board or special magistrate except when
26 presented during the time scheduled for the petitioner’s hearing, or at a time when the
27 petitioner has been given reasonable notice. See Subsection 194.034(1)(c), F.S. Also, see
28 Rule 12D-9.025(4)(a), F.A.C.

29
30 Other provisions of law address the responsibilities of petitioners and property
31 appraisers that may affect the review and consideration of evidence at a hearing.

- 32
33 * The Board or special magistrate must consult with the Board legal counsel on any
34 questions about the review and consideration of evidence.

35
36 In administrative reviews, the Board or special magistrate shall not consider the tax
37 consequences of the valuation of a specific property. See Rule 12D-10.003(1), F.A.C.

38
39 The Board or special magistrate has no power to grant relief by adjusting the value of a
40 property on the basis of hardship of a particular taxpayer. See Rule 12D-10.003(1), F.A.C.

41
42 Unless the provisions of Section 193.016, F.S., apply, a just valuation challenge must
43 stand or fall on its own validity, unconnected with the just value of any prior or
44 subsequent year. See Keith Investments, Inc. v. James, 220 So.2d 695 (Fla. 4th DCA 1969);
45 Also, see Dade County v. Tropical Park, Inc., 251 So.2d 551 (Fla. 3rd DCA 1971).

46

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1 Unless the provisions of Section 193.016, F.S., apply, the prior year's just value is not
2 competent evidence of just value in the current year, even when there is no evidence
3 showing a change in circumstances between the two dates of assessment. See Simpson
4 v. Merrill, 234 So.2d 350 (Fla. 1970).

5
6 An appraisal report shall not be submitted as evidence in a value adjustment board
7 proceeding in any tax year in which the person who performed the appraisal serves as a
8 special magistrate to that county value adjustment board for the same tax year.
9 Accordingly, in that tax year the board and any special magistrate in that county shall
10 not admit such appraisal report into evidence and shall not consider any such appraisal
11 report. See Rule 12D-9.025(4)(g), F.A.C.

14 **The Florida Tangible Personal Property Appraisal Guidelines**

15 Below are provisions from Section 195.032, Florida Statutes, describing the Tangible
16 Personal Property Appraisal Guidelines.

- 17
18 1. *"The standard measures of value shall provide guidelines for the valuation of*
19 *property and methods for property appraisers to employ in arriving at the just*
20 *valuation of particular types of property consistent with section 193.011..."*
21
22 2. *"The standard measures of value shall assist the property appraiser in the valuation*
23 *of property and be deemed prima facie correct, but shall not be deemed to establish*
24 *the just value of any property."*

25
26 See Rule 12D-51.002, Florida Administrative Code, for more information on the
27 Tangible Personal Property (TPP) Appraisal Guidelines.

28 **NOTICE:**

29 **The Florida Tangible Personal Property Appraisal Guidelines are Out-of-Date**

30
31
32 The Florida Tangible Personal Property (TPP) Appraisal Guidelines, developed under
33 sections 195.002, 195.032, and 195.062, F.S., were last revised in 1997 and are now
34 out-of-date due to changes in law. The 1997 guidelines do NOT reflect the impacts of
35 the landmark 2009 enactments in sections 194.301 and 194.3015. Pertinent to the
36 guidelines, the 2009 legislation greatly increased the level of diligence required for
37 developing and reporting just valuations and also established four additional,
38 determinative standards for developing, reporting, and reviewing just valuations. These
39 four additional standards are: 1) compliance with professionally accepted appraisal
40 practices; 2) avoidance of arbitrarily different appraisal practices within groups of
41 comparable property within the same county; 3) avoidance of superseded case law; and
42 4) correct application of an appropriate appraisal methodology. The 1997 TPP appraisal
43 guidelines cannot be used as any sort of standard for the property appraiser's
44 development and reporting of just valuations or for the VAB's review of just valuations.
45 Rather, the current determinative legal standards to be used for just valuation
46 development, reporting, and review are listed under the seven overarching standards

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1 for valid just valuations presented below herein. Such standards reflect the 2009
2 enactments involving sections 194.301, 193.011, and 194.3015, F.S.

3
4 More information on these 2009 enactments is presented in a following section titled
5 “The Seven Overarching Standards for Valid Just Valuations.”

6
7 A copy of the 1997 TPP guidelines is available at:

8 <http://floridarevenue.com/dor/property/tpp/>
9

10 11 **Florida Information on Appraisal Development**

12 In the context of Florida ad valorem tax law, appraisal development is the act, by an
13 appraiser, of applying the appraisal process to arrive at valid just valuations.

14
15 More information on Florida’s standards for appraisal development is in a following
16 section titled “The Seven Overarching Standards for Valid Just Valuations.”

17
18 Section 4, Article VII, of the Florida Constitution, requires a just valuation of all property
19 for ad valorem taxation, with certain conditions.

20
21 Florida’s constitution has “*delegated to the Legislature the responsibility for deciding the*
22 *specifics of how that ‘just valuation’ would be secured.*” Sunset Harbour Condominium
23 Ass’n v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Collier County v. State, 733 So.2d
24 1012, 1019 (Fla. 1999).

25
26 The Florida Legislature has effectuated the constitutional requirement for just valuations
27 by specifying just valuation standards in several statutes, as explained below in a
28 section titled “The Seven Overarching Standards for Valid Just Valuations.”

29
30 Regarding section 193.011, in 1963 the Legislature enacted the initial version of the first
31 seven just valuation factors, effective January 1, 1964. See Chapter 63-250, Laws of
32 Florida, creating Section 193.021, F.S., which was re-numbered in 1969 as Section 193.011,
33 F.S., by Chapter 69-55, Laws of Florida.

34
35 In 1965, the Florida Supreme Court held that just value was synonymous with fair
36 market value and defined fair market value as: “*the amount a purchaser willing but not*
37 *obliged to buy, would pay to one willing but not obliged to sell.*” See Walter v. Schuler, 176
38 So.2d 81 (Fla. 1965).

39
40 * Neither the term “fair market value” nor the term “market value” appears in the
41 Florida Constitution. The term “just valuation” appears in the constitution once and
42 the term “just value” appears in the constitution a total of 22 times, all of which terms
43 appear in Article VII pertaining to the valuation of property for ad valorem taxation.

44
45 * NOTE: The eighth just valuation criterion did not exist at the time of Walter v.
46 Schuler. The Legislature can override decisional law. See Dept. of Environmental
47 Protection v. Contractpoint Florida Parks, 986 So.2d 1260, 1269 (Fla. 2008).

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1
2 Then, in 1967, the legislature added the eighth just valuation criterion (net proceeds of
3 sale) as a new Subsection 193.021(8), Florida Statutes. See Chapter 67-167, Laws of
4 Florida, creating Subsection 193.021(8), F.S., which was re-numbered in 1969 as Subsection
5 193.011(8), F.S., by Chapter 69-55, Laws of Florida.

6
7 Subsection 193.011(8), F.S., generally known as the “eighth criterion,” was last
8 amended in 1979 and is presented below in its entirety.

9
10 *“The net proceeds of the sale of the property, as received by the seller, after deduction*
11 *of all of the usual and reasonable fees and costs of the sale, including the costs and*
12 *expenses of financing, and allowance for unconventional or atypical terms of financing*
13 *arrangements. When the net proceeds of the sale of any property are utilized, directly or*
14 *indirectly, in the determination of just valuation of realty of the sold parcel or any other*
15 *parcel under the provisions of this section, the property appraiser, for the purposes of*
16 *such determination, shall exclude any portion of such net proceeds attributable to*
17 *payments for household furnishings or other items of personal property.”*

18
19 * The eighth criterion must be properly considered in the just valuation of tangible
20 personal property. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd
21 DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

22
23 NOTE: More information on the eighth criterion is presented later in this section and in
24 the last two sections of this module.

25
26 Florida law defines real property as land, buildings, fixtures, and all other improvements
27 to land. See Subsection 192.001(12), F.S.

28
29 Florida law defines personal property as being divided into the following four categories:
30 1) household goods, 2) intangible personal property, 3) inventory, and 4) tangible
31 personal property. See Subsection 192.001(11), F.S.

32
33 Subsection 193.011(8), F.S., states the following in pertinent part: *“When the net*
34 *proceeds of the sale of any property are utilized, directly or indirectly, in the*
35 *determination of just valuation of realty of the sold parcel or any other parcel under the*
36 *provisions of this section, the property appraiser, for the purposes of such*
37 *determination, shall exclude any portion of such net proceeds attributable to payments*
38 *for household furnishings or other items of personal property.”*

39
40 The eighth criterion provides for the deduction of personal property in arriving at net
41 proceeds of sale of real property, but does not specifically address the deduction of
42 personal property to arrive at net proceeds of sale of tangible personal property.

43
44 * However, the Florida Supreme Court found that it is unconstitutional for a property
45 appraiser to include intangible personal property value in the just valuation of
46 tangible personal property. See Havill v. Scripps Howard Cable Co., 742 So.2d 210 (Fla.
47 1998).

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1
2 * Given this decision and the statutory definition of personal property that includes
3 intangible personal property, the personal property component of the eighth criterion
4 must be properly considered in the just valuation of tangible personal property.
5

6 The just value of personal property types other than tangible personal property must be
7 excluded from just valuations of tangible personal property.
8
9

Definition of Tangible Personal Property (TPP)

10 *“Tangible personal property” means all goods, chattels, and other articles of value (but*
11 *does not include the vehicular items enumerated in s. 1(b), Art. VII of the State*
12 *Constitution and elsewhere defined) capable of manual possession and whose chief*
13 *value is intrinsic to the article itself. ‘Construction work in progress’ consists of those*
14 *items of tangible personal property commonly known as fixtures, machinery, and*
15 *equipment when in the process of being installed in new or expanded improvements to*
16 *real property and whose value is materially enhanced upon connection or use with a*
17 *preexisting, taxable, operational system or facility. Construction work in progress shall*
18 *be deemed substantially completed when connected with the preexisting, taxable,*
19 *operational system or facility. Inventory and household goods are expressly excluded*
20 *from this definition.” See Subsection 192.001(11)(d), F.S.*
21
22
23

Exemptions for Tangible Personal Property

24 Chapter 196, Florida Statutes, exempts certain property from the TPP tax.
25
26

27 Exempt property may be subject to TPP return filing requirements.
28

29 TPP may be exempt only if it meets the requirements for an exemption set forth in
30 Chapter 196, Florida Statutes.
31

32 NOTE: For those interested, more information on exemptions for tangible personal
33 property is presented in Module 9 of this training. However, appraiser special
34 magistrates are not required to complete Module 9 of this training.
35
36

Requirement for Taxpayers to File TPP Returns

37 A TPP return (Form DR-405) is a Florida Department of Revenue form that owners of
38 certain TPP are required by law to complete and file with the property appraiser each
39 year by April 1st, unless a lawful extension has been granted.
40
41

42 Form DR-405 can be viewed on the Department’s website at the following link:
43 <http://floridarevenue.com/dor/property/tpp/>
44

45 Owners of TPP valued at \$25,000 or less may receive a filing waiver from the property
46 appraiser upon filing an initial return.

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1
2 Florida law provides for financial penalties when TPP returns are not lawfully filed. See
3 Sections 193.072 and 196.183, F.S.

4
5 The TPP return contains information that the property appraiser may consider in arriving
6 at just value.

7
8 The TPP return is the property appraiser's primary data collection method for TPP
9 characteristics.

10
11 Other data collection methods, such as physical inspections, may be used when
12 necessary.

13
14 A TPP assessment may not be contested with the Board unless the required TPP return
15 was timely filed with the property appraiser. The term "timely filed" means filed by the
16 deadline established in section 193.062, F.S., or before the expiration of any extension
17 granted under section 193.063, F.S. If notice is mailed pursuant to section
18 193.073(1)(a), F.S., a complete return must be submitted under section 193.073(1)(a),
19 F.S., for the assessment to be contested. See Subsection 194.034(1)(j), F.S.

20 21 22 **The Eight Factors of Just Valuation in Section 193.011, F.S.**

23 After the landmark 2009 legislation, the eight just valuation factors in section 193.011
24 are now incorporated into section 194.301 in three places and must be applied together
25 with the other just valuation standards in sections 194.301 and 194.3015, F.S., and in
26 other applicable law, so that each standard is given lawful meaning.

27
28 Section 193.011, Florida Statutes, provides the following on just valuation.

29
30 ***"Factors to consider in deriving just valuation. – In arriving at just valuation as***
31 ***required under s. 4, Art. VII of the State Constitution, the property appraiser shall take***
32 ***into consideration the following factors:***

33
34 *(1) The present cash value of the property, which is the amount a willing purchaser*
35 *would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash*
36 *or the immediate equivalent thereof in a transaction at arm's length;*

37
38 *(2) The highest and best use to which the property can be expected to be put in the*
39 *immediate future and the present use of the property, taking into consideration the*
40 *legally permissible use of the property, including any applicable judicial limitation, local*
41 *or state land use regulation, or historic preservation ordinance, and any zoning*
42 *changes, concurrency requirements, and permits necessary to achieve the highest and*
43 *best use, and considering any moratorium imposed by executive order, law, ordinance,*
44 *regulation, resolution, or proclamation adopted by any governmental body or agency or*
45 *the Governor when the moratorium or judicial limitation prohibits or restricts the*
46 *development or improvement of property as otherwise authorized by applicable law.*
47 *The applicable governmental body or agency or the Governor shall notify the property*

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1 *appraiser in writing of any executive order, ordinance, regulation, resolution, or*
2 *proclamation it adopts imposing any such limitation, regulation, or moratorium;*

3
4 (3) *The location of said property;*

5
6 (4) *The quantity or size of said property;*

7
8 (5) *The cost of said property and the present replacement value of any improvements*
9 *thereon;*

10
11 (6) *The condition of said property;*

12
13 (7) *The income from said property; and*

14
15 (8) *The net proceeds of the sale of the property, as received by the seller, after*
16 *deduction of all of the usual and reasonable fees and costs of the sale, including the*
17 *costs and expenses of financing, and allowance for unconventional or atypical terms of*
18 *financing arrangements. When the net proceeds of the sale of any property are utilized,*
19 *directly or indirectly, in the determination of just valuation of realty of the sold parcel or*
20 *any other parcel under the provisions of this section, the property appraiser, for the*
21 *purposes of such determination, shall exclude any portion of such net proceeds*
22 *attributable to payments for household furnishings or other items of personal property.”*

23
24 Section 193.011 is now part of the determinative just valuation standards provided in
25 sections 194.301 and 194.3015 and in other applicable law, as explained in the next
26 section titled “The Seven Overarching Standards for Valid Just Valuations.”

27 28 29 **The Seven Overarching Standards for Valid Just Valuations**

30 The 2009 statutory changes in sections 194.301 and 194.3015, F.S., greatly increased
31 the standard of care (level of diligence) for the county appraiser’s development and
32 reporting of just valuations for ad valorem taxation in Florida.

33
34 The 2009 changes also established four additional, determinative statutory standards
35 for valid just valuations, as follows: 1) compliance with professionally accepted appraisal
36 practices, 2) avoidance of arbitrarily different appraisal practices within groups of
37 comparable property within the same county, 3) avoidance of superseded case law, and
38 4) correct application of an appropriate appraisal methodology.

39
40 Under Florida’s current legal framework for just valuations, there are seven overarching
41 standards for valid just valuations. These seven standards must be read and applied
42 together, so that each is given appropriate and lawful meaning in light of the facts.

43
44 Compliance with these seven standards requires the appraiser to correctly apply the
45 appraisal process and “...*this important function requires expertise, diligence, sound*
46 *judgment, and objectivity...*” See *Uniform Appraisal Standards for Federal Land Acquisition*
47 *2016* (Appraisal Foundation), page 203.

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1
2 These seven overarching standards are listed and described below.

3
4 **1. Compliance with Professionally Accepted Appraisal Practices for Appraisal**
5 **Development and Appraisal Reporting**

6
7 The section 194.301 standard of professionally accepted appraisal practices applies to
8 the entire appraisal process that includes both appraisal development and appraisal
9 reporting, each of which are addressed separately below.

10
11 Professionally accepted appraisal practices require appraisers to recognize and comply
12 with current laws and regulations that apply to the appraiser or to the appraisal
13 assignment. See Competency Rule, *Uniform Standards of Professional Appraisal Practice*,
14 *2020-2021 Edition* (USPAP), page 11.

15
16 Compliance with professionally accepted appraisal practices encompasses compliance
17 with all other law comprising the seven overarching standards.

18
19 Professionally accepted appraisal practices comprise a voluminous set of practices set
20 forth in thousands of pages of professional appraisal references. The current edition of
21 USPAP is a set of standards consisting of 58 pages that address both appraisal and
22 appraisal review for all types of property.

23
24 Thus, the two are not the same thing because the professionally accepted appraisal
25 practices standard is much more extensive and detailed than USPAP.

26
27 While USPAP is a useful source of information on professionally accepted appraisal
28 practices, it not a substitute for such practices.

29
30 Key Elements of Appraisal Development
31 Under Professionally Accepted Appraisal Practices

32
33 In the context of Florida ad valorem tax law, appraisal development is the act, by an
34 appraiser, of applying the appraisal process to arrive at valid just valuations.

35
36 “Relevant characteristics” is a core appraisal term defined as: “*features that may*
37 *affect a property’s value or marketability such as legal, economic, or physical*
38 *characteristics.”* See Definitions, *Uniform Standards of Professional Appraisal Practice*,
39 *2020-2021 Edition* (Washington, DC: The Appraisal Foundation), page 5.

40
41 Under professionally accepted appraisal practices, the three categories of appraisal
42 data that must be applied in the appraisal process are: legal, physical, and economic.
43 See Standard 5, Mass Appraisal Development, *Uniform Standards of Professional Appraisal*
44 *Practice, 2020-2021 Edition*, page 33. Also, see section 193.1142(1)(c)2., F.S.

45
46 Appraisers are required “*to use due diligence and due care.*” See Competency Rule,
47 *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition*, page 11.

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1
2 An appraiser's valuation must be "*based on careful scrutiny of all the data available.*"
3 See *CSX Transp., Inc. v. Ga. Bd. of Equalization*, 552 U.S. 9 (2007).

4
5 Appraisers have the "*...responsibility to obtain knowledge of all pertinent facts and*
6 *circumstances that can be acquired with diligent inquiry and search.*" See *Uniform*
7 *Appraisal Standards for Federal Land Acquisition 2016* (Appraisal Foundation), page 204.

8
9 "*The appraiser must be diligent in data collection and competently apply the accepted*
10 *methods and techniques of the appraisal profession...*" See *Uniform Appraisal Standards*
11 *for Federal Land Acquisition 2016* (Appraisal Foundation), page 203.

12
13 For appraisal evidence to support a just valuation, the evidence must be relevant to the
14 subject property and must satisfy each of the just valuation standards provided in law.

15
16 The three approaches to just valuation are: 1) the cost less depreciation approach, 2)
17 the sales comparison approach, and 3) the income capitalization approach.

18
19 • Each of the three approaches has variants, depending on: 1) the legal, physical, and
20 economic attributes of the subject property; 2) the availability of appraisal data; and
21 3) the appropriate appraisal methodology.

22
23 Generally, property appraisers use mass appraisal techniques to develop just valuations
24 each year, but property appraisers may also use single-property appraisal techniques.

25
26 When properly applied in compliance with all requirements of law, both mass appraisal
27 and single-property appraisal are professionally accepted appraisal practices.

28
29 It is implicit in mass appraisal that, even when properly specified and calibrated mass
30 appraisal models are used, some individual value conclusions will not meet standards of
31 reasonableness, consistency, and accuracy. See Standard 5, *Mass Appraisal Development,*
32 *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition*, page 37.

33
34 Regardless of the appraisal approach or technique used to develop a particular just
35 value, the approach, technique, and value are subject to review to determine whether
36 the appraisal process complies with all applicable legal standards.

37
38 Summarized below are some key elements of the standard of care (level of diligence)
39 for development of just valuations for Florida ad valorem tax purposes:

40
41 • Identify the legal, physical, and economic attributes of the subject property
42
43 • Identify and comply with all applicable law, and avoid superseded case law
44
45 • Determine the required data, research, and analysis, and identify the professionally
46 accepted appraisal practices and an appropriate appraisal methodology

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- 1
- 2 • Collect, analyze, and maintain legal, physical, and economic data as necessary for
- 3 credible valuations that comply with applicable law
- 4
- 5 • Apply due diligence and due care in the appraisal process, avoid carelessness and
- 6 negligence, and avoid significant errors of commission and omission
- 7
- 8 • Comply with each of the 193.011 factors consistent with all other just valuation
- 9 standards (avoid cursory consideration of 193.011 factors, correctly apply the factors
- 10 needed for a credible and lawful just valuation, and develop professionally accepted
- 11 reasons for not applying any factor not applied)
- 12
- 13 • Avoid appraisal practices that are arbitrarily different from the appraisal practices
- 14 applied to other comparable property in the same county
- 15
- 16 • Correctly apply an appropriate appraisal methodology that complies with
- 17 professionally accepted appraisal practices and each of the other legal standards
- 18
- 19 • Reconcile data and analyses used, and correctly employ quality review procedures
- 20

21 Key Elements of Appraisal Reporting

22 Under Professionally Accepted Appraisal Practices

23

24 Professionally accepted appraisal practices require communicating, or reporting, the

25 appraisal process used to develop the just valuation. An appraisal report is any

26 communication, written or oral, about the appraisal process applied in just valuations.

27

28 Appraisal reporting is part of the appraisal process and is how the appraiser

29 demonstrates compliance with each of the just valuation standards provided by law.

30

31 Conclusory statements made by an appraiser reporting an appraisal process are not

32 sufficient and are not credible. See Scripps Howard Cable Co. v. Havill, 665 So.2d 1071,

33 1077 (Fla. 5th DCA 1995), approved, 742 So.2d 210 (Fla. 1998).

34

35 The text, *Fundamentals of Mass Appraisal*, published in 2011 by the International

36 Association of Assessing Officers, pages 4-5, lists appraisal reporting as part of the

37 appraisal process and then states in pertinent part:

38

39 *“Professional standards, however, require all appraisers to work systematically,*

40 *document their work, communicate their opinions of value clearly, and behave ethically.”*

41

42 The text, *The Appraisal of Real Estate, Fifteenth Edition*, published in 2020 by the

43 Appraisal Institute, pages 31 and 37, lists appraisal reporting as part of the appraisal

44 process and then states in part as follows:

45

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1 *“The report of the value opinion or conclusion addresses the data analyzed, the*
2 *methods applied, and the reasoning that led to the value conclusion and does so in a*
3 *manner that enables the intended users to properly understand the appraiser’s findings*
4 *and conclusions. The objective of the appraisal report is to communicate the valuation*
5 *process with sufficient supporting evidence and logic to ensure that the assignment*
6 *results are credible for the intended use.”*

7
8 Standard 6, Mass Appraisal Reporting, *Uniform Standards of Professional Appraisal*
9 *Practice, 2020-2021 Edition*, page 39, requires appraisers to explain the exclusion of
10 any of the three approaches to value and to:

11
12 *“provide sufficient information to enable the client and intended users to have*
13 *confidence that the process and procedures used conform to accepted methods and*
14 *result in credible value conclusions;”*

15
16 A recent trial court judgment states as follows regarding appraisal reporting:

17
18 *“The 2009 legislation requires the Court to determine whether the appraiser used an*
19 *appropriate methodology in making the assessment. To allow the Court to make this*
20 *determination, the property appraiser must present sufficient evidence that describes*
21 *the appraisal methodology and explains how and why it was applied in valuing the*
22 *Subject Property. Under section 194.301(1), the appraiser has the burden of going*
23 *forward and presenting testimonial and documentary evidence explaining how the*
24 *appraiser satisfied each of the just valuation criteria.”*

25 See Dillards, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).

26
27 Summarized below are some key elements of the standard of care (level of diligence)
28 for just valuation reporting:

- 29
- 30 • Must provide meaningful disclosure of procedures applied in the appraisal process
 - 31
 - 32 • Must be relevant to the legal, physical, and economic attributes of the property, each
 - 33 of the applicable legal criteria, and the appraisal process
 - 34
 - 35 • Must be credible in the context of Florida ad valorem property tax appraisal
 - 36
 - 37 • Must be clear and accurate to enable intended users to understand the appraisal
 - 38 process
 - 39
 - 40 • Must include explanations and reasons, addressing each of the valuation approaches
 - 41 and each of the applicable legal criteria, regarding what was actually done and how
 - 42 and why, in developing the just value
 - 43
 - 44 • Must provide lawful and professionally accepted explanations and reasons for not
 - 45 applying a legal criterion or not applying an appraisal approach
 - 46

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- 1 • Must be sufficient for intended users to understand how and why the just value was
2 developed via the methodology used
3

- 4 • Must avoid misleading statements, conclusory statements, and superseded case law
5

6 **2. Compliance with Each of the Just Valuation Factors in Section 193.011, F.S.** 7

8 After the landmark 2009 legislation, the eight just valuation factors in section 193.011
9 are now incorporated into section 194.301 in three places.
10

- 11 • These eight just valuation factors must now be applied together with the other just
12 valuation standards in sections 194.301 and 194.3015, F.S., and in other applicable
13 law, so that each standard is given professionally accepted and lawful meaning.
14

- 15 • The method of just valuation and the weight to be given to each of the section
16 193.011 factors is now governed solely by: 1) the legal, physical, and economic
17 characteristics of the subject property; 2) the four additional determinative standards
18 in sections 194.301 and 194.3015, F.S.; and 3) all other applicable law.
19

- 20 • In just valuations under current law, it is necessary to actually apply the section
21 193.011 factors that are appropriate for compliance with the four new determinative
22 standards in sections 194.301 and 194.3015 and all other applicable law.
23

- 24 • Under the dictates of section 194.301 and 194.3015, F.S., for any section 193.011
25 factor not applied in a particular just valuation, the appraiser must report a clear,
26 logical, fact-based, and professionally accepted reason for excluding the factor.
27

28 Pre-2009 just valuation case law is replete with obsolete statements indicating a much
29 lower level of diligence (standard of care) for developing and reporting just valuations
30 than required by current law, and these obsolete statements must be avoided.
31

32 Just valuation evidence, including evidence intended to show the property appraiser's
33 compliance with each of the section 193.011 factors, "must be real, material, pertinent,
34 and relevant evidence, as opposed to ethereal, metaphysical, speculative, theoretical,
35 or hypothetical, and it must have definite probative value." See Singh v. Walt Disney
36 Parks, --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).
37

38 The legal, physical, and economic characteristics of the subject property must be
39 reflected in the appraisal data applied for the eight factors in section 193.011 and must
40 be applied in all just valuation approaches.
41

42 The appraiser's compliance with legal standards, including the just valuation
43 factors in section 193.011, must be demonstrated in the appraisal data, analyses,
44 practices, and methods used to develop and report just valuations.
45

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1 Appraisal approaches (methods), the application of legal standards including the section
2 193.011 factors, and the validity of resulting values are interconnected and cannot
3 logically be separated.

4
5 In administrative reviews, the overarching legal standards should be applied in
6 determining whether the appraisal methodology used in making a value
7 assessment is appropriate under the circumstances and this, in turn, should be
8 applied in determining whether the value assessment is valid.

9
10 Below are two examples of how court decisions have correctly applied the section
11 193.011 factors in reviewing appraisal methodology and resulting just valuations.

- 12
13 • Though these examples are pre-2009, they show the connection between legal
14 criteria, appraisal methods, and values, and are used here for that purpose.

15
16 Example 1: The court's decision described a mathematical connection between
17 "*erroneous consideration*" of statutory criteria, an "*improper*" appraisal method, and
18 an excessive value. See Holly Ridge Ltd. Partnership v. Pritchett, 936 So.2d 694, 697-
19 698 (Fla. 5th DCA 2006), rehearing denied.

20
21 Example 2: The court's decision connected the appraisal method, the application of
22 legal criteria, and the rejection of an appraised value, in holding as follows:

23
24 "*The trial court rejected the appellants' appraisal because it found that their appraisal
25 method failed to take into consideration all the factors set forth in section 193.011,
26 *Florida Statutes (1981).*"*

27
28 "*Failure to consider one or more of the factors set forth in section 193.011 is sufficient to
29 invalidate an appraisal done by a tax assessor...*"

30
31 "*We also think the lower court correctly rejected appellants' appraisal because the
32 method used was too speculative."*

33
34 See Muckenfuss v. Miller, 421 So.2d 170, 173-174 (Fla. 5th DCA 1982), petition for review
35 denied, 430 So.2d 450, 451 (Fla. 1983).

37 **3. Avoidance of Arbitrarily Different Appraisal Practices Within Groups of** 38 **Comparable Property Within the Same County.**

39
40 Section 194.301(2)(a)3., F.S., provides that to withstand judicial or administrative
41 review, a just valuation cannot be: "...*arbitrarily based on appraisal practices that are*
42 *different from the appraisal practices generally applied by the property appraiser to*
43 *comparable property within the same county.*"

44
45 Along similar lines, section 195.0012, F.S., expresses legislative intent for assessment
46 uniformity including "...*uniform assessment as between property within each county...*"

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1 The U.S. Supreme Court has also emphasized that “*the uniformity and equality required*
2 *by law*” is of paramount concern in property assessment valuations. See Sioux City
3 Bridge Co. v. Dakota Cty. Neb., 260 U.S. 441, 446–47 (1923), cited in Southern Bell Tel. & Tel.
4 Co. v. Dade Cty., 275 So. 2d 4, 8 (Fla. 1973).

5
6 Avoiding arbitrarily different appraisal practices within groups of comparable property
7 within the same county supports the goal of assessment uniformity.

8
9 Selective reappraisal is an example of arbitrarily different appraisal practices. The text,
10 *Mass Appraisal of Real Property*, published in 1999 by the International Association of
11 Assessing Officers, page 315, explains selective reappraisal, stating in pertinent part:

12
13 “*The reliability of sales ratio statistics depends on unsold parcels being appraised in the*
14 *same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio*
15 *results, possibly rendering them useless. Equally important, selective reappraisal of*
16 *sold parcels (“sales chasing”) is a serious violation of basic appraisal uniformity and is*
17 *highly unprofessional.*”

18
19 Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See
20 Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).

21 22 **4. Avoidance of Superseded Case Law.**

23
24 In 2009, the Florida Legislature made crystal clear its intent to supersede case law that
25 is inconsistent with legislative enactments in sections 194.301 and 194.3015, F.S.

26
27 The 2009 enactments re-engineered the development, reporting, and review of just
28 valuations in Florida. Yet, in some cases, these major statutory changes have not been
29 applied in practice and this continues to be a serious problem.

30
31 Pre-2009 case law, as well as some post-2009 legal arguments based on obsolete pre-
32 2009 case law, do NOT reflect the major statutory changes enacted in 2009.

33
34 For public trust to exist in the VAB process, VABs, VAB attorneys, and special
35 magistrates must understand and act in accordance with this landmark legislation and
36 must be diligent in avoiding the use of obsolete case law in the VAB process.

37
38 The last sentence in subsection 194.301(1), F.S., now states: “*The provisions of this*
39 *subsection preempt any prior case law that is inconsistent with this subsection.*”

40
41 Further, section 194.3015, F.S., now states in its entirety:

42
43 “(1) *It is the express intent of the Legislature that a taxpayer shall never have the*
44 *burden of proving that the property appraiser’s assessment is not supported by any*
45 *reasonable hypothesis of a legal assessment. All cases establishing the every-*
46 *reasonable-hypothesis standard were expressly rejected by the Legislature on the*
47 *adoption of chapter 97-85, Laws of Florida. It is the further intent of the Legislature that*

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1 any cases published since 1997 citing the every-reasonable-hypothesis standard are
2 expressly rejected to the extent that they are interpretive of legislative intent.”

3
4 “(2) This section is intended to clarify existing law and apply retroactively.”

5
6 In 1997, the Florida Legislature, in an attempt to implement fairness for property
7 taxpayers, enacted the original version of section 194.301, F.S., stating in pertinent part:

8
9 “In no case shall the taxpayer have the burden of proving that the property appraiser’s
10 assessment is not supported by any reasonable hypothesis of a legal assessment.”

11
12 In the 1996 to 1998 period, multiple law articles addressed issues in the assessment
13 appeal process and legislative efforts to address fairness for property taxpayers.

14
15 In 2001, despite the 1997 enactment of section 194.301, F.S., in Wal-Mart v. Todora,
16 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the court issued a decision that actually applied
17 the “reasonable hypothesis” standard, stating:

18
19 “Because there are so many well-recognized approaches for arriving at an appraisal,
20 the appraiser’s decision may be overturned only if there is no reasonable hypothesis to
21 support it.”

22
23 In 2002, again despite the 1997 enactment of section 194.301, in Mazourek v. Wal-
24 Mart, 831 So. 2d 85, 91 (Fla. 2002), the court extended the error by quoting the 2001
25 decision in Wal-Mart v. Todora, likewise stating:

26
27 “Because there are so many well-recognized approaches for arriving at an appraisal,
28 the appraiser’s decision may be overturned only if there is no reasonable hypothesis to
29 support it.”

30
31 In 2006, the decision from In re Litestream Technologies, LLC, 337 B.R. 705, 710
32 (Bkrcty. M.D. Fla. 2006) further extended the same error by quoting from Mazourek,
33 instead of following the Legislature’s 1997 directive in section 194.301, F.S.

34
35 Then, in 2009, the Florida Legislature completely amended section 194.301 and created
36 section 194.3015, addressing in both the problem of superseded case law.

37
38 In 2013 in CVS EGL Fruitville Sarasota FL, LLC and Holiday CVS, LLC. v. Todora, 124
39 So. 3d 289 (Fla. 2d DCA 2013), the Second District Court of Appeal admitted the error it
40 made in the aforementioned 2001 case of Wal-Mart v. Todora, and explained how this
41 error was extended when the Florida Supreme Court quoted the error in its
42 aforementioned 2002 decision in Mazourek v. Wal-Mart.

43
44 Also, in CVS EGL, the Second District Court explained an example of the legislative
45 intent behind the 2009 enactments in sections 194.301 and 194.3015, stating:

46

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1 “Because the legislature rejected the application of “any cases published since 1997
2 citing the every-reasonable-hypothesis standard,” it follows that the legislature intended
3 to supersede Todora and Mazourek. We must therefore give deference to the
4 legislature and conclude that Todora and Mazourek are not controlling.”

5
6 In July 2016, the difficulty with applying sections 194.301 and 194.3015 appeared in a
7 final judgment (Singh v. Darden Restaurants, Inc.) where the trial court erred because it
8 failed to apply standards in sections 194.301 and 194.3015, and instead applied
9 obsolete case law standards based on assessment “*discretion*.”

10
11 Then, in Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019),
12 the Fifth District Court overturned the July 2016 trial judgment and explained how the
13 trial judgment erroneously applied pre-2009 case law, stating in pertinent part:

14
15 “...in its final judgment, the trial court cited to language from Mazourek v. Wal-Mart
16 Stores, Inc., 831 So. 2d 85, 89 (Fla. 2002), that “[t]he property appraiser’s determination
17 of assessment value is an exercise of administrative discretion within the officer’s field
18 of expertise.” The Mazourek decision preceded the 2009 amendment to section
19 194.301, Florida Statutes, where the Legislature articulated that the value of property
20 must be determined by an appraisal methodology that met the criteria of section
21 193.011 and professionally accepted appraisal practices.”

Other Examples of Superseded Case Law

22
23
24
25 The holdings in some court decisions based on the legislatively rejected “*reasonable*
26 *hypothesis*” standard show an interconnection between such standard and the obsolete
27 concomitant (attendant) standards that also appeared in such holdings.

28
29 For example, in CVS EGL (2013), the court rejected the concomitant standard of “*within*
30 *the range of reasonable appraisals*” because of its interconnection with the legislatively
31 rejected “*reasonable hypothesis*” standard.

32
33 Eight examples of superseded case law are listed and described below.

34
35 None of these superseded standards is harmless because they unequivocally reflect a
36 lower standard of care and diligence for developing, reporting, and reviewing just values
37 than the standards required by current law in sections 194.301 and 194.3015.

38
39 VABs, VAB attorneys, and special magistrates must be diligent to avoid using any of
40 these types of superseded standards and to reject any arguments espousing them.

Superseded Concomitant Standard No. 1:

41
42 “the core issue in any action challenging a tax assessment is the
43 amount of the assessment, not the methodology utilized in arriving at the valuation”

44
45
46 In Bystrom v. Whitman, 488 So. 2d 520, 521 (Fla. 1986), the court applied this obsolete
47 standard together with the rejected “*reasonable hypothesis*” standard.

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1
2 In 2007 in CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007), the U.S.
3 Supreme Court emphasized the necessity of reviewing appraisal methodology in
4 valuations disputes, stating: “*We do not see how a court can go about determining true*
5 *market value if it may not look behind the State’s choice of valuation methods.*”
6

7 In 2009, the Legislature enacted four new determinative just valuation standards, each
8 providing methodological requirements for developing and reviewing just valuations.
9

Superseded Concomitant Standard No. 2:

10
11 *“within the range of reasonable appraisals”*
12

13 In Blake v. Xerox, 447 So. 2d 1348 (Fla. 1984), the court equated this obsolete
14 concomitant standard with the “*reasonable hypothesis*” standard, stating:
15

16 *“Regardless of which method was theoretically superior, the trial court was bound to*
17 *uphold the appraiser’s determination if it was lawfully arrived at and within the range of*
18 *reasonable appraisals, that is, if it was supported by any reasonable hypothesis of*
19 *legality.”*
20

21 In CVS EGL (2013), the court applied section 194.3015 in overturning a trial judgment
22 that had used the legislatively rejected “*reasonable hypothesis*” standard and its
23 concomitant standard of “*within the range of reasonable appraisals*,” stating:
24

25 *“At no point during the trial court’s application of these standards should it consider*
26 *whether the assessment is within the range of reasonable appraisals or whether it is*
27 *supported by any reasonable hypothesis of legality.”*
28

Superseded Concomitant Standard No. 3:

29
30 *“[t]he property appraiser’s determination of assessment value*
31 *was an exercise of administrative discretion within the officer’s field of expertise”*
32

33 In Blake v. Xerox, 447 So. 2d 1348, 1350 (Fla. 1984), the decision linked this old
34 standard with the legislatively rejected “*reasonable hypothesis*” standard.
35

36 This obsolete statement runs afoul of diligence requirements in the current standards of
37 professionally accepted appraisal practices and appropriate appraisal methodologies.
38

39 In Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019), the
40 court recognized this concomitant standard as being obsolete since 2009.
41

Superseded Concomitant Standard No. 4:

42
43 *“the method of valuation and the weight*
44 *to be given each factor is left to the appraiser’s discretion”*
45

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1 In Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the holding linked this
2 obsolete standard with the legislatively rejected “*reasonable hypothesis*” standard and
3 with the superseded “*within the range of reasonable appraisals*” standard.
4

5 In its 2007 decision in CSX, the U.S. Supreme Court emphasized the necessity of
6 reviewing appraisal methodology in ad valorem tax valuation disputes, stating: “*We do*
7 *not see how a court can go about determining true market value if it may not look*
8 *behind the State’s choice of valuation methods.*”
9

10 In 2009, the Legislature enacted four new determinative just valuation standards, each
11 providing methodological requirements for developing and reviewing just valuations.
12

13 The valuation method and the weight actually given to each section 193.011 factor can
14 be proven only by the actual application and reporting of an appropriate appraisal
15 process that complies with all applicable law and results in a valid just valuation.
16

17 Thus, under current law, the valuation method and the weight given to each section
18 193.011 factor are governed solely by the legal, physical, and economic characteristics
19 of the subject property and by the appropriate application of all just valuation standards
20 in sections 194.301 and 194.3015 and all other applicable law.
21

Superseded Concomitant Standard No. 5:

22 “*The determination of just value inherently and necessarily requires*
23 *the exercise of appraisal judgment and broad discretion by Florida property appraisers.*”
24
25

26 In Fla. Department of Revenue v. Howard, 916 So. 2d 640 (Fla. 2005), the decision
27 references the two preceding obsolete statements based on “*discretion*,” along with this
28 third variant of the obsolete “*discretion*” standard.
29

30 This “*discretion*” variant was based on decades-old legal concepts from a time when the
31 now legislatively rejected “*reasonable hypotheses*” standard held sway.
32

33 Notably, the term “*discretion*” does not appear in the 2020-2021 edition of the Uniform
34 Standards of Professional Appraisal Practice and, likewise, does not appear in the
35 widely cited appraisal text, *The Appraisal of Real Estate, 15th Edition*, published in 2020
36 by the Appraisal Institute.
37

38 Regarding “*appraisal judgment*,” key excerpts from the *Uniform Appraisal Standards for*
39 *Federal Land Acquisition 2016*, published by the Appraisal Foundation, pages 203-204,
40 describe the diligent application of sound appraisal judgment in the appraisal process:
41

42 “*Serving this important function requires expertise, diligence, sound judgment, and*
43 *objectivity...*”
44

45 “*The appraiser must be diligent in data collection and competently apply the accepted*
46 *methods and techniques of the appraisal profession...*”
47

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1 “Appraisers must exercise sound judgment based on known pertinent facts and
2 circumstances, and it is their responsibility to obtain knowledge of all pertinent facts and
3 circumstances that can be acquired with diligent inquiry and search. They must then
4 weigh and consider the relevant facts, exercise sound judgment, and develop an
5 opinion that is completely unbiased by any consideration favoring either the landowner
6 or the government.”
7

8 Thus, appraisal judgment is NOT a substitute for appraisal expertise, diligence, or
9 objectivity. For valid just valuations, appraisal judgment must be sound and must be
10 applied in compliance with the seven overarching standards for valid just valuations.
11

Superseded Concomitant Standard No. 6:

12 “Appraisal is an art, not a science”
13
14

15 In 1969 in Powell v. Kelly 223 So. 2d 305 (Fla. 1969), court applied this obsolete
16 standard along with the legislatively rejected “reasonable hypothesis” standard.
17

18 In its 2007 decision on ad valorem appraisal methodology, the U.S. Supreme Court held
19 that appraisal is an “*applied science*.” See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552
20 U.S. 9 (2007), 552 U.S. 9 (2007).
21

22 On appraisal being a science, Appendix A of the widely cited textbook, *The Appraisal of*
23 *Real Estate, 15th Edition*, published in 2020 by the Appraisal Institute, states:
24

25 “Professional appraisal practice applies the scientific processes of economic analyses
26 (i.e., the valuation process) to develop conclusions in an impartial, objective manner,
27 without bias or any desire on the part of appraisers to accommodate their own interests
28 or the interests of their clients. To form sound conclusions, appraisers avoid personal
29 beliefs or biases and search for market evidence to support their appraisal opinions. It is
30 this level of independence and freedom from either personal views or personal financial
31 gain, and strict adherence to the scientific principles contained in the valuation process,
32 that separate the profession of appraisal from other fields that also deal with real estate
33 values.”
34

Superseded Concomitant Standard No. 7:

35 “Because there are so many well-recognized approaches for arriving at an appraisal...”
36
37

38 In Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the Second District Court
39 ignored section 194.301 and applied this obsolete concomitant standard together with
40 the now legislatively rejected “reasonable hypothesis” standard, stating:
41

42 “Because there are so many well-recognized approaches for arriving at an appraisal,
43 the appraiser’s decision may be overturned only if there is no reasonable hypothesis to
44 support it.”
45

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1 Then, in CVS EGL (2013), the Second District Court admitted its 2001 error in Wal-Mart
2 v. Todora and applied section 194.3015 in overturning a May 2012 trial judgment that
3 had erroneously applied these superseded standards.

Superseded Concomitant Standard No. 8:

4
5
6 *“an appraiser may reach a correct result for the wrong reason”*
7

8 In City National Bank v. Blake, 257 So. 2d 264 (Fla. 3d DCA 1972), the court equated
9 this concomitant standard with the now legislatively rejected *“reasonable hypothesis”*
10 standard, stating:

11
12 *“A tax assessment is presumed correct, and in order to successfully challenge it, the*
13 *taxpayer must present proof which excludes every reasonable hypothesis of a legal*
14 *assessment. That is, an assessor may reach a correct result for the wrong reason.”*
15

16 This old standard was rendered obsolete by the U.S. Supreme Court’s 2007 decision in
17 CSX and by Florida’s enactments in sections 194.301 and 194.3015, F.S.

5. Compliance with All Other Applicable Law.

18
19
20
21 Other applicable law includes just valuation standards for particular situations. These
22 standards may exist in Florida Statutes or in currently applicable case law.

23
24 Examples of other just valuation standards from statutes include the following:

- 25
26 • Section 192.042(2), F.S., provides the January 1 date of assessment and provides
27 that construction work in progress shall have no value placed thereon until
28 substantially completed as defined in section 192.001(11)(d), F.S.
29
30 • Section 193.016, F.S., provides as follows regarding valuations of tangible personal
31 property:

32
33 *“If the property appraiser’s assessment of the same items of tangible personal*
34 *property in the previous year was adjusted by the value adjustment board and the*
35 *decision of the board to reduce the assessment was not successfully appealed by*
36 *the property appraiser, the property appraiser shall consider the reduced values*
37 *determined by the value adjustment board in assessing those items of tangible*
38 *personal property.”*
39

40 *“If the property appraiser adjusts upward the reduced values previously determined*
41 *by the value adjustment board, the property appraiser shall assert additional basic*
42 *and underlying facts not properly considered by the value adjustment board as the*
43 *basis for the increased valuation notwithstanding the prior adjustment by the board.”*
44

45 Other applicable law may also include current case law standards such as:
46

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- 1 • Case law specifies fee simple estate as the interest to be appraised in just valuations.
2 See Schultz v. TM Fla.-Ohio Realty, Ltd., 577 So.2d 573 (Fla. 1991), and see Dept. of
3 Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 (Fla. 1977).
4
- 5 • Case law precludes just valuation methods that include intangible value. See Scripps
6 Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), and see Singh v. Walt Disney Parks,
7 --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).
8

9 **6. Correct Application of an Appropriate Appraisal Methodology**

10 After its 2009 amendment, section 194.301(1), F.S., provides in pertinent part:
11

12
13 *“However, a taxpayer who challenges an assessment is entitled to a determination by*
14 *the value adjustment board or court of the appropriateness of the appraisal*
15 *methodology used in making the assessment. The value of property must be*
16 *determined by an appraisal methodology that complies with the criteria of s. 193.011*
17 *and professionally accepted appraisal practices. The provisions of this subsection*
18 *preempt any prior case law that is inconsistent with this subsection.”*
19

20 An appropriate appraisal methodology is one that: 1) identifies and is appropriately
21 based on the legal, physical, and economic characteristics of the subject property, 2)
22 complies with overarching standards one through five, and 3) is correctly applied.
23

24 In Scripps Howard Cable Co. v. Havill, 665 So. 2d 1071 (Fla. 5th DCA 1995), *approved*,
25 742 So. 2d 210 (Fla. 1998), the court held that the appraisal method under review was
26 not appropriate under the circumstances and certified the following question:
27

28 *“Is the Income/Unit Rule Method of Appraisal an Appropriate Method of Assessing the*
29 *Tangible Personal Property of Television Cable Companies?”*
30

31 Then, in Scripps Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), the Florida
32 Supreme Court answered the certified question in the negative and approved the
33 decision of the Fifth District, holding that the method was not appropriate because it
34 unlawfully included the value of intangible property.
35

36 In 2007, the U.S. Supreme Court held that disputes over ad valorem tax values require
37 review of the appraisal methodology. See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552
38 U.S. 9 (2007), 552 U.S. 9 (2007) (“We do not see how a court can go about determining true
39 market value if it may not look behind the State’s choice of valuation methods”).
40

41 In August 2020, the court issued its final decision in Singh v. Walt Disney Parks, ---
42 So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020), stating in pertinent part:
43

44 *“At trial, the parties agreed that the income approach to value was a*
45 *professionally accepted appraisal practice and provided the most reliable*
46 *indicator of value, but they disputed the proper methodology for performing such*
47 *an assessment.”*

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1
2 “Moreover, it ruled that even if the Rushmore method was a professionally accepted
3 appraisal practice, it could not be used in a manner that violated Florida law. The trial
4 court concluded that by including value attributable to Disney business activities on the
5 Property, Appraiser applied the Rushmore method in a way that violated Florida law.”
6

7 “We agree with the trial court that Appraiser, in the manner in which he applied the
8 Rushmore method, impermissibly included the value of Disney’s intangible business
9 assets in its assessment.”
10

11 The Disney decision shows even if an appraisal practice is professionally accepted in
12 other contexts, it cannot be applied in a manner that violates another part of Florida law.
13

14 Later, in October 2020, a trial court issued a final judgment stating as follows regarding
15 appropriate appraisal methodology.
16

17 “The Property Appraiser failed to prove by a preponderance of the evidence that his
18 assessment was arrived at by utilizing methodology complying with section 193.011 and
19 professionally accepted appraisal practices. Additionally, the Court finds the Property
20 Appraiser’s sole reliance on a cost approach without considering and preparing at least
21 one of an income and/or sales comparison approach for the Subject Property type was
22 not an appropriate appraisal methodology used in making the assessment.”

23 See Dillard’s, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).
24

25 **7. A Just Valuation Developed and Reported in Compliance with Overarching** 26 **Standards One through Six and Supported by a Preponderance of the Relevant** 27 **and Credible Evidence** 28

29 For a just valuation to withstand the scrutiny of review, it must be developed and
30 reported in compliance with overarching standards one through six and must be
31 supported by a preponderance of the relevant and credible just valuation evidence.
32
33

34 **Petitioner Not Required to Present Opinion or Estimate of Value**

35 The petitioner is not required to provide an opinion or estimate of just value.
36

37 No provision of law requires the petitioner to present an opinion or estimate of value.
38

39 The Board or special magistrate is not authorized to require a petitioner to provide an
40 opinion or estimate of just value.
41

42 The petitioner has the option of choosing whether to present an opinion or estimate of
43 just value.
44
45
46
47

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1 **Presentation of Evidence by the Parties**

2 In a Board or special magistrate hearing, the property appraiser is responsible for
3 presenting relevant and credible evidence in support of his or her determination. See
4 Rule 12D-9.025(3)(a), F.A.C.

5
6 An appraisal report shall not be submitted as evidence in a value adjustment board
7 proceeding in any tax year in which the person who performed the appraisal serves as a
8 special magistrate to that county value adjustment board for the same tax year. See
9 Rule 12D-9.025(4)(g), F.A.C.

10
11 Under Subsection 194.301(1), F.S., in a hearing on just value, the first issue to be
12 considered is whether the property appraiser establishes a presumption of correctness.

13
14 * The property appraiser shall present evidence on this issue first. See Rule 12D-
15 9.024(7), F.A.C.

16
17 * While the property appraiser is required to present evidence on this issue first, the
18 Board or special magistrate must allow the petitioner a chance to present evidence
19 on this issue before deciding whether the presumption of correctness is established.

20
21 *“In a Board or special magistrate hearing, the petitioner is responsible for presenting*
22 *relevant and credible evidence in support of his or her belief that the property*
23 *appraiser’s determination is incorrect.”* See Rule 12D-9.025(3)(a), F.A.C.

24
25 If the property appraiser establishes a presumption of correctness by proving by a
26 preponderance of the evidence that the just value assessment was arrived at by
27 complying with Section 193.011, F.S., and professionally accepted appraisal practices,
28 including mass appraisal standards, if appropriate, the petitioner must prove by a
29 preponderance of the evidence that:

- 30
31 1. The property appraiser’s just valuation does not represent just value; or
32
33 2. The property appraiser’s just valuation is arbitrarily based on appraisal practices that
34 are different from the appraisal practices generally applied by the property appraiser
35 to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as
36 amended by Chapter 2009-121, Laws of Florida (House Bill 521).

37
38 However, if the property appraiser does not establish a presumption of correctness
39 because he or she did not prove by a preponderance of the evidence that the just
40 valuation was arrived at by complying with Section 193.011, F.S., and professionally
41 accepted appraisal practices, including mass appraisal standards, if appropriate, the
42 Board or special magistrate must take one of the two following actions:

- 43
44 1. If the record contains competent substantial evidence of just value that cumulatively
45 meets the requirements of Section 193.011, F.S., and professionally accepted
46 appraisal practices, the Board or special magistrate must establish a revised just
47 value; or

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- 1
2 2. If the record lacks such competent substantial evidence, the Board or special
3 magistrate must remand the assessment to the property appraiser with appropriate
4 directions with which the property appraiser must comply.
5
6

Evaluation of Evidence by the Board or Special Magistrate

7
8 Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special
9 magistrate must:

- 10
11 1. Review the evidence presented by the parties;
12
13 2. Determine whether the evidence presented is admissible;
14
15 3. Admit the evidence that is admissible;
16
17 4. Identify the evidence presented to indicate that it is admitted or not admitted; and
18
19 5. Consider the admitted evidence.
20

21 The term “admitted evidence” means evidence that has been admitted into the record
22 for consideration by the Board or special magistrate. See Rule 12D-9.025(2)(a), F.A.C.
23

24 *“No evidence shall be considered by the board or special magistrate except when*
25 *presented and admitted during the time scheduled for the petitioner’s hearing, or at a*
26 *time when the petitioner has been given reasonable notice.”* See Rule 12D-9.025(4)(a),
27 F.A.C.
28

29 *“If a party submits evidence to the board clerk prior to the hearing, the board or special*
30 *magistrate shall not review or consider such evidence prior to the hearing.”* See Rule
31 12D-9.025(4)(b), F.A.C.
32

33 Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:
34

- 35 1. *“As the trier of fact, the board or special magistrate may independently rule on the*
36 *admissibility and use of evidence.”*
37
38 2. *“If the board or special magistrate has any questions relating to the admissibility and*
39 *use of evidence, the board or special magistrate should consult with the board legal*
40 *counsel.”*
41
42 3. *“The basis for any ruling on admissibility of evidence must be reflected in the*
43 *record.”*
44
45 4. *“The special magistrate may delay ruling on the question during the hearing and*
46 *consult with board legal counsel after the hearing.”*
47

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1 The Board or special magistrate shall consider the admitted evidence. See Rule 12D-
2 9.025(1)(d), F.A.C.

3
4 A property owner generally is qualified, on account of ownership, to testify regarding the
5 just value of his or her property. See In re Steffen, 342 B.R. 861 (Bkrtcy. M.D. Fla. 2006).

6
7 NOTE: More information on the admissibility of evidence is presented in Module 4 of
8 this training.

9 10 11 **Sufficiency of Evidence**

12 When applied to evidence, the term “sufficient” is a test of adequacy. See Rule 12D-
13 9.027(6), F.A.C.

14
15 Sufficient evidence is admitted evidence that has enough overall weight, in terms of
16 relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6),
17 F.A.C.

18
19 The Florida Supreme Court stated the following regarding sufficient evidence:
20 “*Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character,*
21 *weight, or amount, as will legally justify the judicial or official action demanded.*” See
22 Tibbs v. State, 397 So.2d 1120 (Fla. 1981). Also, see Moore v. State, 800 So.2d 747 (Fla. 5th
23 DCA 2001).

24
25 A particular conclusion is justified when the overall weight of the admitted evidence
26 meets the standard of proof that applies to the issue under consideration. See Rule 12D-
27 9.027(6), F.A.C.

28
29 The Board or special magistrate must consider the admitted evidence and determine
30 whether it is sufficiently relevant and credible to reach the “preponderance of the
31 evidence” standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-
32 9.027(5), and 12D-9.027(6), F.A.C.

33
34 Rule 12D-9.027(6), F.A.C., states the following in pertinent part: “*In determining*
35 *whether the admitted evidence is sufficient for a particular issue under consideration,*
36 *the board or special magistrate shall:*

- 37
38 (a) *Consider the relevance and credibility of the admitted evidence as a whole,*
39 *regardless of which party presented the evidence;*
40
41 (b) *Determine the relevance and credibility, or overall weight, of the evidence;*
42
43 (c) *Compare the overall weight of the evidence to the standard of proof;*
44
45 (d) *Determine whether the overall weight of the evidence is sufficient to reach the*
46 *standard of proof; and*
47

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1 (e) *Produce a conclusion of law based on the determination of whether the overall*
2 *weight of the evidence has reached the standard of proof.”*
3

4 For administrative reviews of just valuations, “relevant evidence” is evidence that is
5 reasonably related, directly or indirectly, to the statutory criteria that apply to the just
6 valuation of the petitioned property. See Rule 12D-9.025(2)(b), F.A.C.
7

8 * This description means the evidence meets or exceeds a minimum level of
9 relevance necessary to be admitted for consideration, but does not necessarily
10 mean that the evidence has sufficient relevance to legally justify a particular
11 conclusion. See Rule 12D-9.025(2)(b), F.A.C.
12

13 In evaluating the relevance of evidence, the Board or special magistrate must consider,
14 as of the January 1 assessment date, how well the evidence relates to the petitioned
15 property and to the statutory criteria found in Section 193.011, F.S., and in Section
16 194.301, F.S.
17

18 For administrative reviews of just valuations, “credible evidence” means evidence that is
19 worthy of belief (believable). See *Black’s Law Dictionary, Eighth Edition*, page 596.
20

21 NOTE: More information on evaluating the relevance and credibility of evidence is
22 presented in Module 11 of this training.
23

24 By itself, the property record card is not sufficient evidence for establishing a
25 presumption of correctness for the assessment under Subsection 194.301(1), F.S.
26

27 Materials describing the general appraisal practices of the property appraiser alone,
28 without discussing how those practices were applied to the assessment at issue, are not
29 sufficient to establish a presumption of correctness for the assessment. See Property Tax
30 Informational Bulletin PTO 09-29.
31

32 The approval of an assessment roll by the Department of Revenue is not evidence that
33 a particular assessment was made in compliance with statutory requirements and is not
34 sufficient to establish a presumption of correctness for the assessment. See Property Tax
35 Informational Bulletin PTO 09-29.
36
37

Requirements for Establishing a Presumption of Correctness

38 A presumption of correctness for the assessment is not established unless the property
39 appraiser proves by a preponderance of the evidence that the property appraiser’s just
40 valuation methodology complies with Section 193.011, F.S., and professionally
41 accepted appraisal practices, including mass appraisal standards, if appropriate. See
42 Rule 12D-9.027(2)(a), F.A.C.
43
44

45 A presumption of correctness for the assessment is established only when the property
46 appraiser proves by a preponderance of the evidence that the property appraiser’s just

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1 valuation methodology complies with Section 193.011, F.S., and professionally
2 accepted appraisal practices, including mass appraisal standards, if appropriate.

Requirements for Overcoming a Presumption of Correctness

6 If the property appraiser establishes a presumption of correctness, the petitioner can
7 overcome the presumption of correctness by proving by a preponderance of the
8 evidence one of the following:

- 10 1. The property appraiser's just valuation does not represent just value; or
- 12 2. The property appraiser's just valuation is arbitrarily based on appraisal practices that
13 are different from the appraisal practices generally applied by the property appraiser
14 to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as
15 amended by Chapter 2009-121, Laws of Florida (House Bill 521).

17 If the property appraiser establishes a presumption of correctness and the petitioner
18 does not overcome the presumption of correctness as described above, the
19 assessment stands.

Establishing a Revised Just Value or Remanding the Assessment

23 If the property appraiser does not establish a presumption of correctness for the
24 assessment, or if the petitioner overcomes the presumption of correctness, the Board or
25 special magistrate must take one of the two following actions:

- 27 1. If the record contains competent substantial evidence of just value that cumulatively
28 meets the requirements of Section 193.011, F.S., and professionally accepted
29 appraisal practices, the Board or special magistrate must establish a revised just
30 value; or
- 32 2. If the record lacks such competent substantial evidence, the Board or special
33 magistrate must remand the assessment to the property appraiser with appropriate
34 directions with which the property appraiser must comply.

36 NOTE: Information on the procedural requirements for remanded assessments is
37 presented in Module 5 of this training.

Competent Substantial Evidence for Establishing a Revised Just Value

42 Competent substantial evidence for establishing a revised just value, as part of an
43 administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:

- 45 1. Cumulatively meets the criteria of Section 193.011, F.S., and professionally
46 accepted appraisal practices;

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- 1
- 2 2. Tends to prove (is probative of) just value as of January 1 of the assessment year
- 3 under review;
- 4
- 5 3. Is sufficiently relevant and credible to be accepted as adequate to support (legally
- 6 justify) the conclusion reached; and
- 7
- 8 4. Otherwise meets all requirements of law.
- 9

Establishment of Revised Just Values in Administrative Reviews

10
11 The Board or special magistrate is required to establish a revised just value under either
12 of the two following conditions:
13

- 14
- 15 1. The property appraiser does not establish a presumption of correctness for the
- 16 assessment and the hearing record contains competent substantial evidence for
- 17 establishing a revised just value as described above; or
- 18
- 19 2. The petitioner overcomes a presumption of correctness established by the property
- 20 appraiser and the hearing record contains competent substantial evidence for
- 21 establishing a revised just value as described above.
- 22

23 Within their scope of authority, the Board or special magistrate shall establish a revised
24 just value based upon the competent substantial evidence for establishing a revised just
25 value. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House
26 Bill 521).

27
28 Prior to 2009 and the adoption of House Bill 521, Section 194.301, F.S., provided that
29 the Board may establish the assessment when authorized.
30

31 However, the current statute, effective for administrative reviews in 2009, specifically
32 requires that the Board shall establish the just value when authorized by law. See Section
33 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

34
35 *"In establishing a revised just value, the board or special magistrate is not restricted to*
36 *any specific value offered by one of the parties."* See Rule 12D-9.027(2)(b)3.a., F.A.C.
37

38 In establishing a revised just value when required by law, Boards and special
39 magistrates are not required, and are not authorized, to complete an independent
40 valuation approach.
41

42 The establishment of a revised just value does not require the evidence necessary to
43 complete an independent valuation approach.
44

45 The establishment of a revised just value only requires enough evidence to legally
46 justify making an adjustment to the property appraiser's original just valuation.
47

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1 In establishing a revised just value when required by law, Boards and special
2 magistrates are authorized to make the necessary calculations.
3
4

Sequence of General Procedural Steps

5 This section sets forth below a sequence of general procedural steps for Boards and
6 special magistrates to follow in administrative reviews of just valuations in order to fulfill
7 the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.
8
9

10 This sequence of steps applies to: the consideration of evidence, the development of
11 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.
12

13 *“The board or special magistrate shall not be required to make, at any time during a*
14 *hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See
15 Rule 12D-9.025(9), F.A.C.
16

17 *“The board or special magistrate has the discretion to determine whether to make such*
18 *determinations during a hearing or to consider the petition and evidence further after the*
19 *hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.
20

21 In following this sequence of steps, Boards or special magistrates must also meet the
22 requirements of Rule 12D-9.025(1), F.A.C., which are the following:
23

- 24 * Review the evidence presented by the parties;
- 25
- 26 * Determine whether the evidence presented is admissible;
- 27
- 28 * Admit the evidence that is admissible; and
- 29
- 30 * Identify the evidence presented to indicate that it is admitted or not admitted.
31

32 The sequence of general procedural steps presented below is based on Rule 12D-
33 9.027(2), F.A.C. The sequence of general procedural steps is as follows.
34

- 35 1. Consider the admitted evidence presented by the parties.
36
- 37 2. Identify and consider the essential characteristics of the petitioned property based on
38 the admitted evidence and the factors in Section 193.011, F.S.
39
- 40 3. Identify the appraisal methodology used by the property appraiser in developing his
41 or her just valuation of the petitioned property, and consider this appraisal
42 methodology in light of the essential characteristics of the petitioned property.
43
- 44 4. Determine whether the admitted evidence proves by a preponderance of the
45 evidence that the property appraiser’s methodology complies with Section 193.011,
46 F.S., and professionally accepted appraisal practices, including mass appraisal
47 standards, if appropriate.

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- 1
2 5. Determine whether the property appraiser's appraisal methodology is appropriate
3 and whether the property appraiser established a presumption of correctness for the
4 assessment.
5
 - 6 a) The property appraiser's just valuation methodology is not appropriate and a
7 presumption of correctness is not established unless the admitted evidence
8 proves by a preponderance of the evidence that the property appraiser's just
9 valuation methodology complies with Section 193.011, F.S., and professionally
10 accepted appraisal practices, including mass appraisal standards, if appropriate.
11
 - 12 b) The property appraiser's just valuation methodology is appropriate and the
13 presumption of correctness is established only when the admitted evidence
14 proves by a preponderance of the evidence that the property appraiser's just
15 valuation methodology complies with Section 193.011, F.S., and professionally
16 accepted appraisal practices, including mass appraisal standards, if appropriate.
17
- 18 6. If the Board or special magistrate determines that a presumption of correctness is
19 established, the Board or special magistrate must then determine whether the
20 admitted evidence proves by a preponderance of the evidence that:
21
 - 22 a) The property appraiser's just valuation does not represent just value; or
23
 - 24 b) The property appraiser's just valuation is arbitrarily based on appraisal practices
25 that are different from the appraisal practices generally applied by the property
26 appraiser to comparable property within the same county.
27
- 28 7. If the Board or special magistrate determines that one or both of the conditions
29 specified under Step 6 exist, the presumption of correctness is overcome.
30
- 31 8. If the property appraiser does not establish a presumption of correctness, or if the
32 presumption of correctness is overcome, the Board or special magistrate must
33 determine whether the hearing record contains competent, substantial evidence of
34 just value which cumulatively meets the criteria of Section 193.011, F.S., and
35 professionally accepted appraisal practices.
36
 - 37 a) If the hearing record contains competent, substantial evidence for establishing a
38 revised just value, the Board or an appraiser special magistrate must establish a
39 revised just value based only upon such evidence. In establishing a revised just
40 value, the Board or special magistrate is not restricted to any specific value
41 offered by one of the parties.
42
 - 43 b) If the hearing record lacks competent, substantial evidence for establishing a
44 revised just value, the Board or special magistrate must remand the assessment
45 to the property appraiser with appropriate directions for establishing just value.
46 The property appraiser is required to follow these directions.
47

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- 1 9. If the property appraiser establishes a presumption of correctness as described in
2 Step 5 above and that presumption of correctness is not overcome as described in
3 Step 6 above, the assessment stands.
4
5

Operation of the Eighth Criterion Under Florida Law

6 Subsection 193.011(8), F.S., known as the “eighth criterion,” requires proper
7 consideration of the “net proceeds of sale.” The “eighth criterion” was last amended in
8 1979 and is presented below in its entirety.
9

10
11 *“The net proceeds of the sale of the property, as received by the seller, after deduction
12 of all of the usual and reasonable fees and costs of the sale, including the costs and
13 expenses of financing, and allowance for unconventional or atypical terms of financing
14 arrangements. When the net proceeds of the sale of any property are utilized, directly or
15 indirectly, in the determination of just valuation of realty of the sold parcel or any other
16 parcel under the provisions of this section, the property appraiser, for the purposes of
17 such determination, shall exclude any portion of such net proceeds attributable to
18 payments for household furnishings or other items of personal property.”*
19

20 Subsection 193.011(8), F.S., requires proper consideration of the “net proceeds of sale”
21 of tangible personal property, regardless of whether an actual sale of the property has
22 occurred. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000)
23 review denied 780 So.2d 916 (Fla. 2001).
24

25 In Oyster Pointe Condo. Assoc., Inc. v. Nolte, 524 So.2d 415, 418 (Fla. 1988), the
26 Florida Supreme Court, in holding that timeshare marketing costs were not (under
27 timeshare statutes at that time) part of the “reasonable fees and costs of sale” under
28 section 193.011(8), tellingly stated as follows:
29

30 *“However, as we read section 193.011(8), these costs are not among the “reasonable
31 fees and costs of sale” contemplated by the legislature to be excluded from the ad
32 valorem appraisal process.” (underlined emphasis added)*
33

- 34 • This holding is notable because it explains legislative intent for the costs of sale to be
35 “*excluded from the ad valorem appraisal process*” without exception.
36
- 37 • This holding aligns with uniform application of the cost of sale factor, without regard
38 to whether the property was sold, the property type involved, or the approach used to
39 value the property.
40

41 Further, a failure to uniformly apply the “net proceeds of sale” factor would be selective
42 reappraisal.
43

44 The text, *Mass Appraisal of Real Property*, published in 1999 by the International
45 Association of Assessing Officers, page 315, describes the highly undesirable practice
46 of selective reappraisal as follows:
47

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1 “The reliability of sales ratio statistics depends on unsold parcels being appraised in the
2 same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio
3 results, possibly rendering them useless. Equally important, selective reappraisal of
4 sold parcels (“sales chasing”) is a serious violation of basic appraisal uniformity and is
5 highly unprofessional.” (underlined emphasis added)
6

7 Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See
8 Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).
9

10 The eighth criterion must be properly considered in the just valuation of tangible
11 personal property. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA
12 2000) review denied 780 So.2d 916 (Fla. 2001).
13

14 * In administrative reviews of tangible personal property just valuations, Boards and
15 special magistrates must also properly consider the eighth criterion.
16

17 However, Florida law does not provide for the same information regarding the eighth
18 criterion on tangible personal property assessment rolls as for real property rolls.
19

20 * There are no recorded selling prices for tangible personal property as there are for
21 real property.
22

23 * Property appraisers are not required to report selling prices for tangible personal
24 property to the Department as they are required to do for real property.
25

26 NOTE: More information on the eighth criterion and the just valuation of tangible
27 personal property is presented earlier in this module in the section titled “Florida
28 Information on Appraisal Development.”
29
30

The Eighth Criterion in Reviews of Tangible Personal Property

31 In the development of tangible personal property assessment rolls, property appraisers
32 are responsible for properly considering the eighth criterion in the just valuation of
33 tangible personal property.
34

35 In administrative reviews of just valuations of tangible personal property, the parties are
36 responsible for presenting relevant and credible evidence, in accordance with law,
37 regarding how the eighth criterion applies to the just valuation of tangible personal
38 property.
39

40 Boards and special magistrates are responsible for determining, based on admitted
41 evidence and in accordance with law, how the eighth criterion applies in administrative
42 reviews of just valuations of tangible personal property.
43
44
45

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Module 9: Administrative Reviews of Denials of Exemptions and Property Classifications

This training module addresses the following topics:

PART 1: Introduction

- Overview of Exemptions and Property Classifications
- Applications for Exemptions and Property Classifications
- Denials of Exemptions and Property Classifications
- Scope of Authority for Administrative Reviews
- Overview of Statutory Criteria
- Standard of Proof for Administrative Reviews
- Evaluation of Evidence by the Board or Special Magistrate
- Sufficiency of Evidence

PART 2: Administrative Reviews of Denials of Exemptions

- The Administrative Review Process for Denials of Exemptions
 - Statutory Criteria for Exemptions
- #### **Statutory Criteria for Different Types of Personal Exemptions**
- Homestead Exemption: Qualifications and Benefits
 - Homestead Exemption: Permanent Residence
 - Homestead Exemption: Rental
 - Homestead Exemption: Additional Exemption for Low Income Seniors
 - Homestead Exemption: Save Our Homes
 - Homestead Exemption: Damaged or Destroyed Property
 - Homestead Exemption: Living Quarters for Parents or Grandparents
 - Homestead Exemption: Totally and Permanently Disabled Persons
 - Exemptions for Veterans
 - Exemption for Veterans: Discount for Disabled Veterans
 - Exemption for Deployed Service Members Beginning in 2011
 - Exemptions for First Responders Who Were Totally and Permanently Disabled in the Line of Duty, and For Surviving Spouses
- #### **Statutory Criteria for Different Types of Institutional Exemptions**
- Government Property
 - Exempt Entities
 - Lands Used for Conservation Purposes
 - Specific Educational Exemptions
 - Exemptions for Tangible Personal Property
 - Other Exemptions

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1 **PART 3: Administrative Reviews of Denials of Property Classifications**

- 2 • The Administrative Review Process for Denials of Classifications
- 3 • Statutory Criteria for Property Classifications

5 **Statutory Criteria for Different Types of Property Classifications**

- 6 • Agricultural Property
 - 7 • Agricultural Property: Dispersed Water Storage Programs
 - 8 • Agricultural Property: Quarantine and Eradication Programs
 - 9 • Agricultural Property: Special Types
- 10 • Pollution Control Devices
- 11 • Noncommercial Recreation and Conservation Lands
- 12 • Historic Property
- 13 • Historic Property: Section 193.503, F.S.
- 14 • Historic Property: Section 193.505, F.S.
- 15 • High-water Recharge Property
- 16 • Working Waterfront Property
- 17 • Renewable Energy Source Device
- 18 •

20 **PART 4: Administrative Reviews of Determinations of Changes of Ownership or Control or Qualifying Improvement**

- 22 • Assessment Increase Limitation for Homestead Real Property
- 23 • Assessment Increase Limitation for Non-Homestead Real Property

26 **Learning Objectives**

27 After completing this training module, the learner should be able to:

- 29 • Identify what is subtracted from assessed value to arrive at taxable value.
- 30 • Recognize the statutory order in which exemptions must be deducted to arrive at taxable value (see Section 196.031, F.S.)
- 32 • Recognize that the disabled veterans discount is deducted after exemptions are deducted to arrive at taxable value
- 34 • Distinguish between a property classification and classified use value
- 35 • Identify the requirements for applications for exemptions and property classifications
- 36 • Recognize the requirements for denials of exemptions and property classifications
- 37 • Identify the statutory criteria for a valid denial of an exemption by the property appraiser
- 39 • Apply the correct procedures for determining whether a denial of an exemption by the property appraiser is valid
- 41 • Apply the correct procedures when a denial of an exemption by the property appraiser has been determined to be invalid
- 43 • Apply the correct procedures when a denial of an exemption by the property appraiser has been determined to be valid
- 45 • Recognize and apply the scope of authority for administrative reviews of denials of exemptions and property classifications

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- 1 • Identify the items that a Board or special magistrate may consider in addition to
- 2 admitted evidence
- 3 • Recognize that there is no presumption of correctness for a property appraiser's
- 4 determination on an exemption or classification
- 5 • Identify the applicable standard of proof, its definition, and how it is applied
- 6 • Identify and apply the steps for evaluating evidence in administrative reviews
- 7 • Recognize and apply the provisions for ruling on the admissibility of evidence
- 8 • Identify and apply the definitions of relevant evidence and credible evidence
- 9 • Recognize and apply the standards for determining the sufficiency of evidence
- 10 • Identify when the Board or special magistrate is required or is NOT required to make
- 11 determinations such as findings, conclusions, or decisions
- 12 • Apply the sequence of general procedural steps for administrative reviews of denials
- 13 of exemptions
- 14 • Apply the sequence of general procedural steps for administrative reviews of denials
- 15 of property classifications
- 16 • Distinguish between the sequence of general procedural steps for administrative
- 17 reviews of denials of exemptions and the sequence of general procedural steps for
- 18 administrative reviews of denials of property classifications
- 19 • Recognize the conditions under which a Board or special magistrate must grant an
- 20 exemption or classification
- 21 • Recognize the conditions under which a Board or special magistrate must NOT grant
- 22 an exemption or classification
- 23 • Identify and apply the statutory criteria for administrative reviews of denials of
- 24 exemptions and property classifications

PART 1: Introduction

Overview of Exemptions and Property Classifications

30 Sections 3, 4, and 6, Article VII, of the Florida Constitution, provide for exemptions and
31 property classifications.

33 Generally, after the property appraiser has considered the just value of a property and
34 produced an assessed value, the assessed value is then reduced by any exemptions to
35 produce the taxable value.

37 After the assessed value is correctly determined, the exempt amounts are deducted in
38 the order provided by law (see Section 196.031, F.S.). After that, any discounts, such as
39 the disabled veteran's discount, are applied.

41 "Exemption" means exemptions under Chapter 196, Florida Statutes, and other Florida
42 Statutes.

44 * For purposes of this training, exemptions include the following: veteran's discount,
45 immunity where a claim of tax immunity for government property is being made, and
46 portability assessment differences.

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1
2 “Property Classification” or “Classification” means a classification of property for
3 assessment purposes according to applicable statutory criteria, including those in
4 Chapter 193, Part II, F.S., and an assessment of the property at its classified use value.

5
6 “Classified use value” means the value of a property that is based solely on the
7 property’s character or use and based on the applicable statutory criteria, without regard
8 to the property’s highest and best use. See Subsection 192.001(2), F.S.

9 10 11 **Applications for Exemptions and Property Classifications**

12 A property owner must apply for an exemption by the applicable deadline in order to
13 receive the exemption. See Subsection 196.011(1)(a), F.S.

14
15 If a property owner failed to timely file for an exemption, he or she must late file for the
16 exemption with the property appraiser by the 25th day after the mailing of the notice of
17 proposed property taxes (TRIM notice).

18
19 If the property appraiser determines, based on sufficient evidence, that the late filed
20 exemption was late because the applicant was unable to file timely or there were other
21 extenuating circumstances, the property appraiser may grant the exemption to an
22 otherwise qualified applicant for the current year.

23
24 If the property appraiser does not grant the late filed exemption, the property owner may
25 appeal to the Board, by the 25th day after the mailing of the notice of proposed property
26 taxes (TRIM notice).

27
28 The Board may grant the exemption to an otherwise qualified applicant if it finds the
29 failure to apply was due to extenuating circumstances. Subsection 196.011(8), F.S.

30
31 If a postal error resulted in an otherwise eligible applicant not filing on time his or her
32 application for an exemption, the Board or special magistrate must grant the exemption.
33 Subsection 196.011(7), F.S.

34
35 The county may waive the requirement that exemptions be applied for annually and
36 provide for automatic renewal of some exemptions. Subsection 196.011(9), F.S.

37
38 * At the option of the property appraiser, initial or original applications for homestead
39 exemption for the succeeding year may be accepted and granted after March 1.

40
41 **Note:** Legislation enacted in 2014 amended section 193.461, F.S., to provide that an
42 applicant for the agricultural classification who does not file an application by the March
43 1 filing deadline, can file an application with the property appraiser on or before 25 days
44 after the property appraiser mails the notice of proposed property taxes (TRIM notice).

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- 1 * The application must include sufficient evidence that demonstrates the applicant was
2 unable to apply in a timely manner or otherwise demonstrates extenuating
3 circumstances warranting the classification.
4
- 5 * The property appraiser may grant the application if he or she determines the
6 circumstances warrant.
7
- 8 * If the applicant files an application for the classification and fails to provide sufficient
9 evidence to the property appraiser as required, the applicant may file a petition with
10 the value adjustment board on or before 25 days after the property appraiser mails
11 the notice of proposed property taxes (TRIM notice).
12
- 13 * This legislation was effective July 1, 2014 and applies to administrative reviews
14 beginning in 2014. See Chapter 2014-150, Section 2, Laws of Florida (HB 7091).
15
16

Denials of Exemptions and Property Classifications

17 Florida Statutes require that the property appraiser issue in writing a denial of an
18 exemption or classification.
19

20
21 The denial will typically reference missing documentation that, if supplied, could qualify
22 the taxpayer for the exemption or classification.
23

24 The petitioner must show that the statutory criteria are satisfied to qualify for an
25 exemption or classification.
26

27 If an exemption or classification is denied by the property appraiser, the petitioner must
28 file his or her petition to the Board within 30 days of that notice of denial.
29

30 Subsection 196.193(5)(a), F.S., states the following regarding the denial of an
31 exemption:
32

33 *“If the property appraiser determines that any property claimed as wholly or partially*
34 *exempt under this section is not entitled to any exemption or is entitled to an exemption*
35 *to an extent other than that requested in the application, he or she shall notify the*
36 *person or organization filing the application on such property of that determination in*
37 *writing on or before July 1 of the year for which the application was filed.”*
38

39 Subsection 196.193(5)(b), F.S., provides the following criteria for a valid denial of an
40 exemption by the property appraiser:
41

- 42 1. *“The notification must state in clear and unambiguous language the specific*
43 *requirements of the state statutes which the property appraiser relied upon to deny*
44 *the applicant the exemption with respect to the subject property.”*
45

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- 1 2. *“The notification must be drafted in such a way that a reasonable person can*
2 *understand specific attributes of the applicant or the applicant’s use of the subject*
3 *property which formed the basis for the denial.”*
4
- 5 3. *“The notice must also include the specific facts the property appraiser used to*
6 *determine that the applicant failed to meet the statutory requirements.”*
7

8 Under Subsection 196.193(5)(b), F.S., if a property appraiser fails to provide a notice of
9 denial of an exemption that complies with the criteria stated above, the denial or the
10 attempted denial of the exemption is invalid.

- 11
- 12 * Rule 12D-9.027(4)(a), F.A.C., provides the following regarding the administrative
13 review of a denial of an exemption:

14

15 *“(a) In the case of an exemption, the board or special magistrate shall consider*
16 *whether the denial was valid or invalid and shall:*

17

- 18 1. *Review the exemption denial, and compare it to the applicable statutory criteria in*
19 *Section 196.193(5), F.S.;*

20

- 21 2. *Determine whether the denial was valid under Section 196.193, F.S.; and*
22

23 3. *If the denial is found to be invalid, not give weight to the exemption denial or to*
24 *any evidence supporting the basis for such denial, but shall instead proceed to*
25 *dispose of the matter without further consideration in compliance with Section*
26 *194.301, F.S.”*
27
28

Scope of Authority for Administrative Reviews

29 The administrative review process (done by Boards) is separate and different from the
30 assessment roll production process (done by property appraisers).
31

32

33 The Board’s authority is limited to the review of individual petitions filed. See Spooner v.
34 Askew, 345 So.2d 1055 (Fla. 1976).
35

36 The Board has the limited function of reviewing and correcting individual determinations
37 of the property appraiser. See Bath Club, Inc. v. Dade County, 394 So.2d 110 (Fla. 1981).
38

39 Upon proper filing of a petition, a Board is authorized to conduct an administrative
40 review of a decision by the property appraiser to deny a tax exemption or a property
41 classification.
42

- 43 * The Board has no authority to review, on its own volition, a decision of the property
44 appraiser to deny an exemption. See Redford v. Department of Revenue, 478 So.2d 808
45 (Fla. 1985).
46

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1 The Board or special magistrate has no power to grant an exemption or property
2 classification not authorized by law. See Rule 12D-10.003(1), F.A.C.

3
4 The Board or special magistrate has no power to grant an exemption or property
5 classification on the basis of hardship of a particular taxpayer. See Rule 12D-10.003(1),
6 F.A.C.

7
8 In considering a petition for exemption or property classification, the Board or special
9 magistrate must not consider the ultimate amount of tax required. See Rule 12D-
10 10.003(1), F.A.C.

11
12 In administrative reviews regarding exemptions or classifications, Boards and special
13 magistrates are not authorized to perform any independent factual research into
14 attributes of the subject property or attributes of the property owner.

15
16 Boards and special magistrates must follow the provisions of law on the administrative
17 review of assessments. See Chapter 194, Parts 1 and 3, F.S., and Rule Chapters 12D-9, 12D-
18 10, and 12D-16, F.A.C.

19
20 In administrative reviews of denials of exemptions and classifications, Boards and
21 special magistrates are bound by the same standards as property appraisers. See Rule
22 12D-10.003(1), Florida Administrative Code. However, when observing this requirement,
23 Boards and special magistrates must act within their scope of authority.

24
25 In administrative reviews, Boards and special magistrates are not authorized to consider
26 any evidence except evidence properly presented by the parties and properly admitted
27 into the record for consideration. See Rule 12D-9.025(4)(a), F.A.C.

28
29 In addition to admitted evidence, Boards and special magistrates are authorized to
30 consider only the following items in administrative reviews.

- 31
- 32 1. Legal advice from the Board legal counsel;
 - 33
 - 34 2. Information contained or referenced in the Department's Uniform Policies and
35 Procedures Manual and Accompanying Documents; and
 - 36
 - 37 3. Information contained or referenced in the Department's training for value
38 adjustment boards and special magistrates.
 - 39
 - 40

Overview of Statutory Criteria

41
42 Boards and special magistrates, with the assistance of the Board attorney, must identify
43 and follow the provisions of law that pertain to the administrative review of exemptions
44 and property classifications.

45

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1 These provisions of law include statutory criteria that apply to the particular exemption
2 or classification under administrative review. Statutory criteria do not include any factor
3 that is not a conclusive statutory criterion.

4
5 For purposes of this training module, “statutory criteria” means a set of statutory
6 requirements that must be satisfied individually, by sufficient admitted evidence, to
7 legally justify the granting of the exemption or classification by a Board or special
8 magistrate.

9
10 Where necessary and where the context will permit, the term “statutory criteria” includes
11 any constitutional criteria that do not require implementation by legislation. See Rule
12 12D-9.027(4)(g), F.A.C.

13
14 * Additional information on the statutory criteria for exemptions is contained in Rule
15 Chapter 12D-7, F.A.C.

16
17 The effective date of administrative review is January 1 of the assessment year under
18 review. This is an essential statutory criterion. See Section 192.042, F.S.

19 20 21 **Standard of Proof for Administrative Reviews**

22 In administrative reviews, Boards or special magistrates must consider admitted
23 evidence and then compare the weight of the evidence to a “standard of proof” to make
24 a determination on an issue under review.

25
26 Generally, the term “evidence” means something (including testimony, documents, and
27 tangible objects) that tends to prove or disprove the existence of a disputed fact. See
28 *Black’s Law Dictionary, Eighth Edition*, page 595.

29
30 “Standard of proof” means the level of proof needed for the Board or special magistrate
31 to conclude that the classification or exemption status assigned to the property is
32 incorrect. See Rule 12D-9.027(5), F.A.C.

33
34 The standard of proof that applies in administrative reviews of the classification or
35 exemption status is called “preponderance of the evidence,” which means “greater
36 weight of the evidence.” See Subsection 194.301(2)(d), F.S., and Rule 12D-9.027(5), F.A.C.

37
38 For administrative reviews, preponderance of the evidence means greater weight of the
39 evidence or evidence that more likely than not proves the property appraiser’s
40 determination should be overturned and the petition granted. See Gross v. Lyons, 763
41 So.2d 276 (Fla. 2000).

42
43 This standard of proof is the scale by which the Board or special magistrate measures
44 the weight (relevance and credibility) of the admitted evidence.

45

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1 The taxpayer shall never be required to prove that the property appraiser's
2 determination is not supported by any reasonable hypothesis of a legal assessment.

3
4 There is no presumption of correctness in administrative reviews of the exemption or
5 property classification status of the property. See Subsection 194.301(2)(d), F.S.

6
7 The party initiating the challenge has the burden of proving by a preponderance of the
8 evidence that the classification or exemption status assigned to the property is incorrect.
9 See Subsection 194.301(2)(d), F.S.

Evaluation of Evidence by the Board or Special Magistrate

10
11
12 Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special
13 magistrate must:

- 14 1. Review the evidence presented by the parties;
- 15
- 16 2. Determine whether the evidence presented is admissible;
- 17
- 18 3. Admit the evidence that is admissible;
- 19
- 20 4. Identify the evidence presented to indicate that it is admitted or not admitted; and
- 21
- 22 5. Consider the admitted evidence.
- 23
- 24
- 25

26 The term "admitted evidence" means evidence that has been admitted into the record
27 for consideration by the Board or special magistrate. See Rule 12D-9.025(2)(a), F.A.C.

28
29 *"No evidence shall be considered by the board or special magistrate except when*
30 *presented and admitted during the time scheduled for the petitioner's hearing, or at a*
31 *time when the petitioner has been given reasonable notice."* See Rule 12D-9.025(4)(a),
32 F.A.C.

33
34 *"If a party submits evidence to the board clerk prior to the hearing, the board or special*
35 *magistrate shall not review or consider such evidence prior to the hearing."* See Rule
36 12D-9.025(4)(b), F.A.C.

37
38 Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:

- 39
- 40 1. *"As the trier of fact, the board or special magistrate may independently rule on the*
41 *admissibility and use of evidence."*
- 42
- 43 2. *"If the board or special magistrate has any questions relating to the admissibility and*
44 *use of evidence, the board or special magistrate should consult with the board legal*
45 *counsel."*
- 46

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- 1 3. *“The basis for any ruling on admissibility of evidence must be reflected in the*
2 *record.”*
3
4 4. *“The special magistrate may delay ruling on the question during the hearing and*
5 *consult with board legal counsel after the hearing.”*
6

7 NOTE: More information on the admissibility of evidence is presented in Module 4.
8
9

Sufficiency of Evidence

10 When applied to evidence, the term “sufficient” is a test of adequacy. See Rule 12D-
11 9.027(6), F.A.C.
12

13
14 Sufficient evidence is admitted evidence that has enough overall weight, in terms of
15 relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6),
16 F.A.C.
17

18 The Florida Supreme Court stated the following regarding sufficient evidence:
19 *“Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character,*
20 *weight, or amount, as will legally justify the judicial or official action demanded.”* See
21 *Tibbs v. State*, 397 So.2d 1120 (Fla. 1981). Also, see *Moore v. State*, 800 So.2d 747 (Fla. 5th
22 DCA 2001).
23

24 A particular conclusion is justified when the overall weight of the admitted evidence
25 meets the standard of proof that applies to the issue under consideration. See Rule 12D-
26 9.027(6), F.A.C.
27

28 The Board or special magistrate must consider the admitted evidence and determine
29 whether it is sufficiently relevant and credible to reach the “preponderance of the
30 evidence” standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-
31 9.027(5), and 12D-9.027(6), F.A.C.
32

33 Rule 12D-9.027(6), F.A.C., states the following in pertinent part: *“In determining*
34 *whether the admitted evidence is sufficient for a particular issue under consideration,*
35 *the board or special magistrate shall:*
36

- 37 (a) *Consider the relevance and credibility of the admitted evidence as a whole,*
38 *regardless of which party presented the evidence;*
39
40 (b) *Determine the relevance and credibility, or overall weight, of the evidence;*
41
42 (c) *Compare the overall weight of the evidence to the standard of proof;*
43
44 (d) *Determine whether the overall weight of the evidence is sufficient to reach the*
45 *standard of proof; and*
46

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1 (e) *Produce a conclusion of law based on the determination of whether the overall*
2 *weight of the evidence has reached the standard of proof.”*
3

4 For administrative reviews of denials of exemptions and classifications, “relevant
5 evidence” is evidence that is reasonably related, directly or indirectly, to the statutory
6 criteria that apply to the petitioned property or the property owner, as applicable. See
7 Rule 12D-9.025(2)(b), F.A.C.
8

9 * This description means the evidence meets or exceeds a minimum level of
10 relevance necessary to be admitted for consideration, but does not necessarily
11 mean that the evidence has sufficient relevance to legally justify a particular
12 conclusion. See Rule 12D-9.025(2)(b), F.A.C.
13

14 In evaluating the relevance of evidence, the Board or special magistrate must consider,
15 as of the January 1 assessment date, how well the evidence relates to the petitioned
16 property or the property owner, as applicable, and to the statutory criteria that apply.
17

18 For administrative reviews, “credible evidence” means evidence that is worthy of belief
19 (believable). See *Black’s Law Dictionary, Eighth Edition*, page 596.
20

21 NOTE: More information on evaluating the relevance and credibility of evidence is
22 presented in Module 11 of this training.
23
24

PART 2: Administrative Reviews of Denials of Exemptions

25
26
27 The sections below contain information on the administrative review of denials of
28 exemptions, including information on the statutory criteria for exemptions.
29
30

The Administrative Review Process for Denials of Exemptions

31 Set forth below is a sequence of general procedural steps for Boards and special
32 magistrates to follow in administrative reviews of denials of exemptions in order to fulfill
33 the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(4), F.A.C.
34
35

36 This sequence of steps applies to: the consideration of evidence, the development of
37 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.
38

39 *“The board or special magistrate shall not be required to make, at any time during a*
40 *hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See
41 Rule 12D-9.025(9), F.A.C.
42

43 *“The board or special magistrate has the discretion to determine whether to make such*
44 *determinations during a hearing or to consider the petition and evidence further after the*
45 *hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.
46

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1 Under Rule 12D-9.027(4), F.A.C., in administrative reviews of denials of exemptions,
2 the Board or special magistrate shall follow this sequence of general procedural steps:
3

4 1. In the case of an exemption, the Board or special magistrate shall consider whether
5 the denial was valid or invalid and shall:
6

7 * Review the exemption denial, and compare it to the applicable statutory criteria in
8 Section 196.193(5), F.S.;

9 * Determine whether the denial was valid under Section 196.193, F.S.; and
10

11 * If the exemption denial is found to be invalid, not give weight to the exemption
12 denial or to any evidence supporting the basis for such denial, but shall instead
13 proceed to dispose of the matter without further consideration in compliance with
14 Section 194.301, F.S.
15

16
17 2. If the exemption denial is found to be valid, the Board or special magistrate shall
18 proceed with the following steps:
19

20 * Consider the admitted evidence presented by the parties;
21

22 * Identify the particular exemption issue that is the subject of the petition;
23

24 * Identify the statutory criteria that apply to the particular exemption that was
25 identified as the issue under administrative review;
26

27 * Identify and consider the essential characteristics of the petitioned property or the
28 property owner, as applicable, based on the statutory criteria that apply to the
29 issue under administrative review;
30

31 * Identify and consider the basis used by the property appraiser in issuing the
32 exemption denial for the petitioned property; and
33

34 * Determine whether the admitted evidence proves by a preponderance of the
35 evidence that the property appraiser's denial is incorrect and the exemption
36 should be granted because all of the applicable statutory criteria are satisfied.
37

38 The Board or special magistrate must decide whether the admitted evidence, regardless
39 of which party presented the evidence, has sufficient weight (in relevance and
40 credibility) to legally justify overturning the property appraiser's original determination
41 and granting the exemption.
42

43 If the admitted evidence proves the petitioner's case by the greater weight of the
44 evidence, the original determination must be overturned and the petition granted.
45

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1 If the admitted evidence does not legally justify overturning the property appraiser's
2 original determination, the determination must be upheld.

3 4 5 **Statutory Criteria for Exemptions**

6 This section contains information regarding the statutory criteria that must be met to
7 qualify for the various exemptions available in Florida.

- 8
9 * In the case of the more common exemptions, this training presents more detail on
10 the applicable statutory criteria.
11
12 * Less common exemptions will simply be mentioned so that users of this training are
13 aware of their existence, and a citation will be provided so users can read the
14 statutory criteria when one of the less common exemptions arises.
15
16

17 **Statutory Criteria for Different Types of Personal Exemptions**

18 The statutory criteria that apply to several types of personal exemptions are presented
19 below under their respective headings.
20
21

22 **Homestead Exemption: Qualifications and Benefits**

23 Homestead is established on January 1 of each tax year. In order to qualify for the
24 homestead exemption an individual must:

- 25
26 * Have legal or beneficial title to the property which is demonstrated by a deed or
27 instrument on file in the public records; and
28
29 * Make the property their permanent residence, or the permanent residence of a
30 person legally or naturally dependent upon the individual.
31

32 Homestead property receives:

- 33
34 * An exemption of \$25,000 from all levies.
35
36 * An additional exemption of up to \$25,000 on the assessed valuation greater than
37 \$50,000 for all levies other than school district levies.
38
39 * A limitation on assessments under the Save Our Homes provisions.
40
41 * Eligibility for additional exemptions that are available only on homestead properties.
42 See section 196.031, F.S.
43

44 See also Rule 12D-7.0142, F.A.C.
45
46

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1 **Homestead Exemption: Permanent Residence**

2 Permanent residence means that place where a person has his or her true, fixed, and
3 permanent home and principal establishment to which, whenever absent, he or she has
4 the intention of returning.
5

6 A person may have only one permanent residence at a time, and once a permanent
7 residence is established in a foreign state or country, it is presumed to continue until the
8 person shows that a change has occurred. See section 196.012(17), F.S.
9

10 Intention to establish a permanent residence in Florida is a factual determination to be
11 made, in the first instance, by the property appraiser.
12

13 Section 196.015, F.S., provides factors the property appraisers may consider in making
14 this determination.
15

16 Although any one factor is not conclusive of the establishment or non-establishment of
17 permanent residence, the following are relevant factors that may be considered by the
18 property appraiser in making his or her determination about the intent of a person
19 claiming a homestead exemption to establish a permanent residence in Florida:
20

- 21 * Formal declaration of domicile by the applicant recorded in the public records of the
22 county where the exemption is sought;
- 23
- 24 * Where the applicant's dependent children are registered for school;
- 25
- 26 * The place of employment of the applicant;
- 27
- 28 * The previous permanent residency by the applicant in a state other than Florida or in
29 another country and the date non-Florida residency was terminated;
- 30
- 31 * Proof of voter registration at the place for which the exemption is being sought;
- 32
- 33 * A valid Florida driver's license or identification card and evidence of relinquishment
34 of driver's license from another state;
- 35
- 36 * The issuance of a license tag on any motor vehicle owned by the applicant;
- 37
- 38 * The address as listed on federal income tax returns filed by the applicant;
- 39
- 40 * The location where the applicant's bank statements and checking accounts are
41 registered; and
- 42
- 43 * Proof of payment of utilities at the location where residence is being claimed.
44 See section 196.015, F.S.
45
46

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1 **Homestead Exemption: Rental**

2 See section 196.061, F.S.

3 Rental of all or substantially all of a dwelling previously claimed to be a homestead for
4 tax purposes constitutes abandonment of the dwelling as a homestead, when the
5 property is rented for more than 30 days per calendar year for two consecutive years.

6
7 Abandonment continues until the dwelling is physically occupied by the owner.

8
9 **Note:** Legislation enacted in 2013 provides that rental of the homestead after January
10 1 of any year does not affect the homestead exemption for tax purposes for that
11 particular year unless the property is rented for more than 30 days per calendar year for
12 two consecutive years. These changes were effective July 1, 2013, and apply to
13 assessments and administrative reviews beginning in 2014. See Chapter 2013-64, Laws
14 of Florida (SB 342).

15
16 This provision does not apply to a member of the Armed Forces of the United States
17 whose service in such forces is the result of a mandatory obligation imposed by the
18 federal Selective Service Act or who volunteers for service as a member of the Armed
19 Forces of the United States.

20 21 22 **Homestead Exemption: Additional Exemption for Low Income Seniors**

23 The Board of County Commissioners of a county or the governing authority of a
24 municipality may adopt an ordinance to allow an additional homestead exemption of up
25 to \$50,000 for any person who has the legal or equitable title to real estate and
26 maintains thereon the permanent residence of the owner, and who:

- 27
28 * Has the legal or equitable title to real estate;
29 * Uses that real estate as their permanent residence;
30 * Is age 65, or older; and
31 * Whose household income does not exceed \$20,000, adjusted annually, beginning
32 January 1, 2001, by the percentage change in the average cost-of-living index.

33
34 For the 2018 assessment year, the 2017 adjusted gross household income to qualify for
35 this exemption is \$29,454 or less.

36
37 For the 2019 assessment year, the 2018 adjusted gross household income to qualify for
38 this exemption is \$30,174 or less.

39
40 For the 2020 assessment year, the 2019 adjusted gross household income to qualify for
41 this exemption is \$30,721 or less.

42
43 [For the 2021 assessment year, the 2020 adjusted gross household income to qualify for](#)
44 [this exemption is \\$31,100 or less.](#) See section 196.075, F.S., and Rule 12D-7.0143, F.A.C.

45

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1 **Note:** An amendment approved by the voters in the November 2012 general election
2 added a local option of up to an additional \$50,000 exemption for low income seniors
3 that have maintained a permanent residence on the property for at least 25 years. See
4 section 196.075, F.S.

5
6 **Note:** Legislation enacted in 2021 amended section 196.075(4)(d), and (5), Florida
7 Statutes, which provides an additional homestead exemption for persons 65 and older.
8 The amendment to section 196.075(4)(d), F.S., requires an ordinance enacted by a
9 local government authorizing an additional homestead exemption for low-income
10 seniors must require the taxpayer to submit a sworn statement of household income
11 when claiming the exemption for the first time. The amendment to section 196.075(5),
12 F.S., provides that the property appraiser notifies each taxpayer of the adjusted income
13 limitation each year. The taxpayer must respond by May 1 if their income exceeds the
14 limitation. The property appraiser may conduct random audits of the taxpayers' sworn
15 statements. See Chapter 2021-208, Section 1, Laws of Florida, (HB 597), effective July 1,
16 2021.

17 18 19 **Homestead Exemption: Save Our Homes**

20 Relating to exemptions, the primary limitation on assessment increases is the Save Our
21 Homes Amendment limitation which caps assessment increases on homestead
22 property at the lesser of 3 percent or the percentage change in the consumer price
23 index.

24
25 When applied to the just value assessment in the initial year when homestead is
26 established, any subsequent increases in that assessment are capped.

27
28 Property is reassessed on the transfer of the homestead property.
29
30

31 **Homestead Exemption: Damaged or Destroyed Property**

32 See section 196.031(6), F.S.

33 A homestead exemption may be granted to damaged or destroyed property that is
34 otherwise qualified if the property owner notifies the property appraiser that he or she
35 intends to repair or rebuild the property and live in the property as his or her primary
36 residence after the property is repaired or rebuilt and does not claim a homestead
37 exemption on any other property.

38
39 Failure by the property owner to begin the repair or rebuilding of the homestead
40 property within three years after January 1 following the year the property was damaged
41 or destroyed constitutes abandonment of the property as a homestead.
42
43
44
45

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Homestead Exemption: Living Quarters for Parents or Grandparents

This exemption is found in Section 193.703, F.S. It applies to construction or reconstruction of a homestead intended to provide living quarters for the owner's parent or grandparent.

The qualifications for this exemption are:

- * The parent or grandparent must be 62 or older;
- * The parent or grandparent must be the natural or adoptive parent or grandparent of an owner of the homestead or of an owner's spouse;
- * Application must be made by March 1;
- * Reconstruction or construction must have been made to an existing homestead property; and
- * The parent or grandparent must make their primary place of residence on the property and cannot qualify for a separate homestead exemption.

If a taxpayer qualifies under the statute, the exemption from taxation is limited to an amount not to exceed:

- * Twenty percent of the total assessed value of the property as improved; or
- * The increase in value resulting from the construction or reconstruction.

Homestead Exemption: Totally and Permanently Disabled Persons

See section 196.101, F.S.

In order to qualify for a total exemption on their homestead a person must have a qualifying household income (the 2017 household income cannot exceed \$28,713 for the 2018 assessment year, the 2018 household income cannot exceed \$29,415 for the 2019 assessment year, the 2019 household income cannot exceed \$29,948 for the 2020 assessment year, and [the 2020 household income cannot exceed \\$30,317 for the 2021 assessment year](#)) and the applicant must be:

- * Paraplegic;
- * Hemiplegic;
- * Legally blind; or
- * Totally and permanently disabled and dependent on a wheelchair for mobility.

Persons who are quadriplegic qualify for a total exemption on their homestead without meeting the income limitation.

Totally and permanently disabled persons who do not qualify for a total exemption can receive a \$500 exemption under Section 196.202, F.S. This \$500 exemption is also granted to widows, widowers, and blind persons.

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1 **Exemptions for Veterans**

2 See sections 196.081, 196.082, 196.091, and 196.24, F.S.

3 Any ex-service member (or qualified surviving spouse) who meets the three criteria
4 below shall receive a \$5,000 exemption on their property:

5

6 * Is a bona fide resident of the state;

7 * Was discharged under honorable conditions; and

8 * Has been disabled to a degree of 10 percent or higher.

9

10 Any ex-service member (or qualified surviving spouse) requiring specially adapted
11 housing and required to use a wheelchair for his or her transportation shall be exempt
12 from taxation on his or her homestead when he or she meets the following criteria:

13

14 * Was honorably discharged with a service-connected total disability certificate; and

15 * Is receiving or has received "special pecuniary assistance".

16

17 Any totally and permanently disabled veteran or qualified surviving spouse shall be
18 exempt from taxation on his or her homestead when he or she meets the following
19 criteria:

20

21 * Was honorably discharged with a service-connected total and permanent disability;

22

23 * Was issued a letter from the United States Government or United States Department
24 of Veterans Affairs or its predecessor certifying that the veteran is totally and
25 permanently disabled; and

26

27 * Was a permanent resident of the State of Florida on January 1 of the year in which
28 the exemption is being claimed (or was a permanent resident on January 1 of the
29 year of their death).

30

31 This exemption is also granted to the qualified surviving spouse of a veteran who dies
32 during active duty from service-connected causes provided that the veteran was a
33 permanent resident of the State of Florida on January 1 of the year he or she died.

34

35 **Note:** Legislation enacted in 2018 amended section 196.24, F.S., relating to
36 qualification for an exemption, to remove the statutory requirement for an unremarried
37 surviving spouse to have been married to a disabled veteran for at least five years on
38 the date of the veteran's death. See Chapter 2018-118, Section 16, Laws of Florida (CS/HB
39 7087).

40

41 **Note:** Legislation enacted in 2020 created section 196.081(1)(b), F.S. to provide that a
42 veteran or veteran's surviving spouse may receive a prorated refund of property taxes
43 paid on property on which legal or beneficial title is acquired between January 1 and
44 November 1. The additional requirements for the refund are that the veteran or
45 veteran's surviving spouse:

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- receives an exemption under section 196.081, F.S., on a property for the tax year, and
- applies for and receives an exemption on the acquired property in the next tax year under section 196.081, F.S.

The refund is prorated as of the date of transfer. If the property appraiser determines the veteran or spouse is entitled to an exemption under section 196.081, F.S., on the newly acquired property, the law provides for the property appraiser to make entries on the tax roll necessary to allow the prorated refund of taxes for the previous tax year. See Chapter 2020-140, Laws of Florida (CS/CS/HB 1249), effective July 1, 2020.

Exemption for Veterans: Discount for Disabled Veterans

See section 196.082, F.S.

In addition to the exemptions listed previously, there is a discount on taxes due on homestead property available to disabled veterans. In order to qualify, the veteran must meet the following criteria:

- * Be 65 or older;
- * Have a combat-related disability; and
- * Have been honorably discharged.

When a veteran is qualified, the property appraiser shall apply all exemptions to which the veteran is entitled to the property value, calculate the taxes due on the property, and then reduce the taxes due by the veteran's percentage of disability.

Exemption for Deployed Servicemembers Beginning in 2011

The 2011 Legislature enacted an exemption for certain servicemembers who receive a homestead exemption and who are deployed in certain military operations to receive an additional ad valorem tax exemption.

- * The percentage exempt under the exemption is calculated as the number of days the servicemember was deployed during the previous calendar year, divided by the number of days in that year, multiplied by 100.
- * It applies to both the school and county taxable values, and applies beginning in the 2011 tax year.
- * See Chapter 2011-93, Laws of Florida (effective May 31, 2011), creating Section 196.173, F.S.
- * See also Rule 12D-7.0055, F.A.C.

Note: The 2020 Legislature amended section 196.173, F.S., relating to the exemption for deployed servicemembers, to remove Operation Enduring Freedom, which began October 7, 2001, and ended December 31, 2014. The amendment added Operation

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1 Juniper Shield, which began in February 2007; Operation Pacific Eagle, which began in
2 September 2017, and Operation Martillo, which began in January 2012. After the
3 amendment, this legislation retained the following military operations on the list:
4

- 5 • Operation Joint Task Force Bravo, which began in 1995.
- 6 • Operation Joint Guardian, which began on June 12, 1999.
- 7 • Operation Noble Eagle, which began on September 15, 2001.
- 8 • Operations in the Balkans, which began in 2004.
- 9 • Operation Nomad Shadow, which began in 2007.
- 10 • Operation U.S. Airstrikes Al Qaeda in Somalia, which began in January 2007.
- 11 • Operation Juniper Shield, which began in February 2007.
- 12 • Operation Copper Dune, which began in 2009.
- 13 • Operation Georgia Deployment Program, which began in August 2009.
- 14 • Operation Spartan Shield, which began in June 2011.
- 15 • Operation Observant Compass, which began in October 2011.
- 16 • Operation Martillo, which began in January 2012.
- 17 • Operation Inherent Resolve, which began on August 8, 2014.
- 18 • Operation Atlantic Resolve, which began in April 2014.
- 19 • Operation Freedom's Sentinel, which began on January 1, 2015.
- 20 • Operation Resolute Support, which began in January 2015.
- 21 • Operation Pacific Eagle, which began in September 2017.

22
23 See Chapter 2020-10, Sections 7 and 8, Laws of Florida, (HB 7097), effective upon becoming a
24 law on April 8, 2020, and first applicable to the 2020 ad valorem tax roll, and Chapter 2018-118,
25 Section 15, Laws of Florida (CS/HB 7087).
26

- 27 • This exemption is also available to servicemembers who were deployed during
28 the preceding calendar year on active duty outside the continental United States,
29 Alaska, or Hawaii in support of a subordinate operation to a main operation
30 designated in section 196.173(2), F.S.
31
32

33 **Exemptions for First Responders Who Were Totally and Permanently** 34 **Disabled in the Line of Duty, and For Surviving Spouses**

35 Section 196.081, F.S., provides an exemption for surviving spouses of first responders
36 who die in the line of duty. See Chapter 2012-54, Laws of Florida (CS/HB 95).
37

38 **Note:** Legislation enacted in 2017 created section 196.102, F.S., to: provide an
39 exemption for certain first responders whose total and permanent disability occurred in
40 the line of duty, and for surviving spouses; extend the exemption application deadline
41 for 2017 to August 1, 2017, or later if extenuating circumstances are shown; and
42 provide for petitions to the value adjustment board for denials of such exemptions. This
43 change was effective June 14, 2017, and applies to assessments and administrative
44 reviews beginning in 2017. See Chapter 2017-105, Sections 2 and 3, Laws of Florida (CS/HB
45 455).

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Statutory Criteria for Different Types of Institutional Exemptions

These exemptions apply to property other than homestead property. The exemption can be based either on the ownership of the property, such as governmental property, or the use of the property, such as educational exemptions.

Because of the number of these exemptions, most of the exemptions will not be discussed in detail. Instead a statutory reference will be provided so the requirements of that exemption can be found easily.

The statutory criteria that apply to several types of personal exemptions are presented below under their respective headings.

Government Property

See section 196.199, F.S.

Governmental property can be immune to taxation, exempt from taxation, or taxable.

Property that is immune from taxation is property that the taxing authority has no ability to tax.

Property that is exempt is property that the state, through its constitution, statutes, and local ordinances, has chosen not to tax.

Property belonging to the federal government is immune from taxation.

State and county property is also immune from taxation and cannot be taxed unless immunity has been waived.

Municipal property and property belonging to most special districts is exempt from taxation as long as it is being used for municipal or other exempt purposes.

Note: Legislation enacted in 2014 moved the exemption for special districts to newly created section 189.055, F.S., from section 189.403, F.S. See Chapter 2014-22, Section 53, Laws of Florida (SB 1632).

Governmental property leased to non-governmental entities may become taxable under section 196.199, F.S.

Note: Legislation enacted in 2018 amended section 163.01, F.S. to clarify that the property tax exemption in this statute applies whether the property is within or outside the jurisdiction of the legal entity that owns it. The amendment also clarifies that the exemption applies regardless of whether the legal entity enters into agreements with private entities to manage, operate or improve the utilities the separate entity owns. See Chapter 2018-118, Section 7, Laws of Florida (CS/HB 7087).

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1
2 **Note:** Legislation enacted in 2015 added section 196.199(1)(a)2., F.S., to provide an
3 ad valorem tax exemption for a leasehold interest in and improvements affixed to land
4 owned by the United States, any branch of the United States Armed Forces, or any
5 agency or quasi-governmental agency of the United States if the leasehold and
6 improvements are acquired or constructed and used pursuant to the federal Military
7 Housing Privatization Initiative of 1996. Any such leasehold interest and improvements
8 are exempt from ad valorem taxation regardless of whether title is held by the United
9 States and without necessity of filing an application for the exemption or receiving
10 approval from the property appraiser. This act defines “improvements” to include actual
11 housing units and any facilities that are directly related to such housing units, including
12 any housing maintenance facilities, housing rental and management offices, parks and
13 community centers, and recreational facilities. This law applies retroactively to January
14 1, 2007. See Chapter 2015-80, Section 1, Laws of Florida (CS for CS for HB 361).

15
16

Exempt Entities

17 See Sections 196.192, 196.193, 196.194, 196.195, and 196.196, F.S.

18 Exempt entities are nonprofit ventures which serve a charitable, religious, scientific, or
19 literary purpose.

20
21 All property owned by an exempt entity and used exclusively for an exempt purpose is
22 totally exempt.

23
24 Property owned by an exempt entity and used primarily for an exempt purpose is
25 exempt to the extent that the ratio of such predominate use bears to the non-exempt
26 use.

27
28 Tangible personal property loaned to an exempt entity for public display or exhibition on
29 a recurring schedule for no, or nominal, consideration, is exempt.

30
31 **Note:** Legislation enacted in 2021 amended section 196.196(2), Florida Statutes, to
32 provide that portions of a property that are not predominantly used for charitable,
33 religious, scientific, or literary purposes are not exempt from taxation, and that an
34 exemption for the portions of property used for charitable, religious, scientific, or literary
35 purposes is not affected so long as the predominant use of such property is for charitable,
36 religious, scientific, or literary purposes. The amendment applies to taxable years
37 beginning on or after January 1, 2022, and does not provide a basis for an assessment
38 of any tax not paid or create a right to a refund or credit of any tax paid before July 1,
39 2021. See Chapter 2021-31, Sections 8 and 9, Laws of Florida, (HB 7061), effective July 1,
40 2021 and applicable beginning January 1, 2022.

41
42
43

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1 **Lands Used for Conservation Purposes**

2 Section 196.26, F.S., provides a new exemption for the 2010 tax year for “real property
3 dedicated in perpetuity for conservation purposes”.

4
5 In order to qualify for this exemption, the parcel of land must:

6
7 * Be subject to an easement which dedicates the land in perpetuity for conservation
8 purposes; and

9
10 * Be at least 40 acres in size or “fulfill a clearly delineated state conservation policy
11 and yield a significant public benefit”.

12
13 If the land is used exclusively for conservation purposes it is exempt from ad valorem
14 taxation.

15
16 If the land is used for allowed commercial purposes, the land receives an exemption
17 equal to 50 percent of the land’s assessed value.

18
19 **Note:** Legislation was enacted in 2016 to amend section 196.011(6)(b), F.S., to provide
20 that once the property appraiser has granted an original application for this exemption,
21 the property owner is not required to file a renewal application until the property’s use
22 no longer complies with the restrictions and requirements of the conservation easement.
23 See Chapter 2016-110, Laws of Florida (CS/SB 190).

24
25

26 **Specific Educational Exemptions**

27 Charter school property receives an exemption in Section 196.1983, F.S.

28
29 **Note:** Legislation enacted in 2017 amended section 196.1983, F.S., to clarify
30 provisions requiring landlords to reduce lease payments made by charter schools so
31 that the schools receive the full benefit derived by the landlord from the exemption,
32 effective retroactively to January 1, 2017. See Chapter 2017-36, section 7, Laws of Florida
33 (HB 7109).

34
35 Gold Seal Quality Child Care Centers are exempt as educational institutions. Section
36 402.26, F.S.

37
38 College sororities and fraternities can be exempt under section 196.198, F.S.

39
40 Section 196.198, F.S., also specifically exempts sheltered workshops providing
41 rehabilitation and retraining to disabled individuals.

42
43 **Note:** Legislation enacted in 2013 amended Section 196.198, F.S, to include an
44 additional form of ownership that qualifies for the educational property exemption.

45

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1 * Property used exclusively for educational purposes is deemed owned by an
2 educational institution and qualifies for the educational property exemption if the
3 entity that owns 100 percent of the educational institution and the entity that owns
4 the property are owned by the identical natural persons.

5
6 **Note:** Legislation enacted in 2021 amended section 196.198, Florida Statutes,
7 educational property exemption, to provide that land, buildings, and other improvements
8 used exclusively for educational purposes shall be deemed owned by an educational
9 institution if the educational institution that currently uses the land, buildings, and other
10 improvements for educational purposes is an educational institution described under s.
11 212.0602, F.S, and, under a lease, the educational institution is responsible for any
12 taxes owed and for ongoing maintenance and operational expenses for the land,
13 buildings, and other improvements. The owner of the property must disclose to the
14 educational institution the full amount of the benefit derived from the exemption and the
15 method for ensuring the educational institution receives the benefit so that the
16 educational institution receives the full benefit of the exemption. Also, property owned
17 by a house of public worship and used by an educational institution for educational
18 purposes limited to students in preschool through grade 8 is exempt. The amendment
19 relating to property owned by a house of public worship is remedial and clarifying in
20 nature and applies to actions pending as of July 1, 2021. See Chapter 2021-31, Sections 11
21 and 12, Laws of Florida, (HB 7061), effective July 1, 2021.

Exemptions for Tangible Personal Property

22
23
24 Beginning in 2008, the first \$25,000 of tangible personal property listed on each return
25 is exempt. See section 196.183, F.S.

26
27
28 * See also Rule 12D-7.019, F.A.C.

29
30 Household goods and personal effects are exempt. See section 196.181, F.S.

31
32 Inventory is exempt. See section 196.185, F.S.

33
34 **Note:** Legislation enacted in 2017 amended section 192.001(11)(c), F.S., to clarify that
35 the term “inventory” includes specified construction and agricultural equipment weighing
36 1,000 pounds or more that is returned to a dealership under a rent-to-purchase option
37 and held for sale to customers in the ordinary course of business. This change was
38 effective July 1, 2017, and applies to assessments and administrative reviews beginning
39 in 2018. See Chapter 2017-36, Sections 2 and 59, Laws of Florida (HB 7109).

Other Exemptions

40
41
42 Labor organization property. See section 196.1985, F.S.

43
44
45 Affordable housing. See section 196.1978, F.S.

46

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1 **Note:** Legislation enacted in 2021 amended section 196.1978(2), Florida Statutes,
2 affordable housing property exemption, removing the ad valorem tax discount of 50
3 percent and enacting an exemption of 100 percent on multifamily projects that provide
4 housing to extremely-low-income, very-low-income, or low-income families. Such a
5 multifamily project will receive the exemption beginning on January 1 of the year
6 following the 15th year of such an agreement. See Chapter 2021-31, Section 10, Laws of
7 Florida, (HB 7061), effective July 1, 2021.

8
9 **Note:** The 2020 Legislature enacted two amendments to section 196.1978(1), F.S. in
10 Chapter 2020-10, section 10, Laws of Florida, effective upon becoming a law April 8,
11 2020 and operating retroactive to January 1, 2020; and Chapter 2020-10, section 11,
12 Laws of Florida, effective January 1, 2021.

- 13 • Section 10 amended section 196.1978(1), F.S., to provide, for property used to
14 provide affordable housing, additional criteria under which vacant units are
15 treated as exempt portions of the affordable housing property. These criteria are:
16 if a recorded land use restriction agreement requires all residential units within
17 the property to be used in a manner that qualifies for the exemption under this
18 subsection and if the vacant units are being offered for rent. effective upon
19 becoming a law and will operate retroactively to January 1, 2020. See chapter
20 2020-10, Section 10, Laws of Florida (CS/HB 7097).
- 21 • Section 11 amended section 196.1978(1), F.S., to provide legislative intent for
22 property used to provide affordable housing, that if the sole member of a limited
23 liability company that owns the property is also a limited liability company that is
24 disregarded as an entity for federal income tax purposes, the property will be
25 treated as owned by the sole member of the limited liability company that owns
26 the limited liability company that owns the property. Also, units whose occupants'
27 income no longer meet the income limits, but whose income met the income
28 limits at the time they became tenants, shall be treated as exempt portions of the
29 affordable housing property. This amendment is effective January 1, 2021. See
30 Chapter 2020-10, Section 11, Laws of Florida (CS/HB 7097).

31
32 **Note:** Legislation enacted in 2017 amended section 196.1978(2), F.S., to provide a 50
33 percent discount on property taxes for specified portions of certain multifamily properties
34 that offer affordable housing to specified low-income persons and families, if application
35 is made by March 1. This amendment also specifies procedures for the application of
36 the discount and provides conditions for the termination of the discount. The
37 amendment is effective starting in 2018. See Chapter 2017-36, Section 6, Laws of Florida
38 (HB 7109).

39
40 Community centers. See section 196.1986, F.S.

41
42 Historic properties. See section 196.1997, F.S.

43
44 Historic properties open to the public. See section 196.1998, F.S.

45
46 Not for profit sewer and water companies. See section 196.2001, F.S.

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1
2 Section 501(c)(12), I.R.C., not-for-profit water and wastewater systems. See section
3 196.2002, F.S.

4
5 Historic property used for certain commercial or nonprofit purposes. See section 196.1961,
6 F.S.

7
8 New and expanding businesses. See section 196.1995, F.S.

9
10 Renewable energy source devices. See section 196.182, F.S.

11
12 **Note:** Legislation enacted in 2017 created section 196.182, F.S., to provide an
13 exemption, from the tangible personal property tax, of 80 percent of the assessed value
14 of certain renewable energy source devices, if the device, as defined in s. 193.624, is
15 considered tangible personal property and:

- 16 (a) Is installed on real property on or after January 1, 2018;
17 (b) Was installed before January 1, 2018, to supply a municipal electric utility located
18 within a consolidated government; or
19 (c) Was installed after August 30, 2016, on municipal land as part of a described
20 project supplying a municipal electric utility for certain purposes.

21
22 This legislation also specifies conditions under which the exemption would not apply,
23 and specifies conditions under which the exemption would apply to devices affixed to
24 property owned or leased by the U.S. Department of Defense. This change is effective
25 July 1, 2017, and applies to assessments and administrative reviews beginning in 2018.
26 See Chapter 2017-118, Sections 3 and 8, Laws of Florida (CS/SB 90).

27
28 **Note:** Legislation enacted in 2014 amended section 196.1995, F.S., to provide that, in
29 order to qualify for the economic development exemption, the improvements to real
30 property must be made or the tangible personal property must be added or increased
31 after approval by motion or resolution of the local governing body, subject to ordinance
32 adoption, or on or after the day the ordinance is adopted.

33
34 * This legislation was effective May 12, 2014, and applies to assessments and
35 administrative reviews beginning in 2015. See Chapter 2014-40, Section 1, Laws of
36 Florida (HB 7081).

37
38 **Note:** Legislation enacted in 2016 amended sections 196.012 and 196.1995, F.S, to
39 provide:

- 40
41 • Language to describe the new businesses and expansions of existing businesses
42 that are eligible to receive the economic development property tax exemption. It
43 states that the new businesses and expansions of existing businesses that are in
44 areas that were designated as enterprise zones under Ch. 290, F.S., as of
45 December 30, 2015, but not in a brownfield area, may qualify for the property tax

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1 exemption only if the local governing body approves by motion or resolution, subject
2 to ordinance adoption, or by ordinance enacted before December 31, 2015.

- 3
- 4 • All data center equipment for a data center will be exempt from property taxation for
5 the term of the approved exemption.
6
 - 7 • Any exemption granted under this section will remain in effect for up to 10 years with
8 respect to any particular facility, or up to 20 years for a data center, regardless of
9 any change in the authority of the county or municipality to grant these exemptions
10 or the expiration of the Enterprise Zone Act under Ch. 290, F.S.
11
 - 12 • This law's amendments to ss. 196.012 and 196.1995, F.S., which relate to the
13 property tax exemption for certain enterprise zone businesses, are remedial in
14 nature and apply retroactively to December 31, 2015.

15 See Chapter 2016-220, Sections 2, 3, and 4, Laws of Florida (HB 7099).

16
17
18 Space laboratories and carriers. See section 196.1999, F.S.

19
20 Biblical history display. See section 196.1987, F.S.

21
22 **Note:** Hospitals. Legislation enacted in 2021 repealed section 193.019, F.S., relating to
23 the exemption for hospitals and community benefit reporting. See Chapter 2021-31,
24 Section 1, Laws of Florida, (HB 7061), effective May 21, 2021. Legislation enacted in 2020
25 had created section 193.019, F.S., effective January 1, 2022, relating to the exemption
26 for hospitals, and providing for community benefit reporting. See Chapter 2020-10, Section
27 2, Laws of Florida (CS/HB 7097) effective January 1, 2022.

28
29 Hospitals, nursing homes, and homes for special services. See section 196.197, F.S.

30
31 **Note:** Legislation enacted in 2017 amended section 196.012(9), F.S., to include in the
32 terms "nursing home" or "home for special services," institutions that possess a valid
33 license under Chapter 429, Part I, F.S., and to make this amendment applicable to the
34 2017 property tax roll. This change was effective May 25, 2017 and applies to
35 assessments and administrative reviews beginning in 2017. See Chapter 2017-36, Sections
36 3 and 4, Laws of Florida (HB 7109).

37
38 Nonprofit homes for the aged. See section 196.1975, F.S.

39
40 **Note:** Legislation enacted in 2017 amended section 196.1975(4)(c), F.S., to provide
41 that a not-for-profit corporation applying for an exemption for units or apartments under
42 paragraph (4)(a) of the statute must file, with the application, an affidavit from each
43 person who occupies a unit stating the person's income; the corporation is not required
44 to provide an affidavit from a resident who is a totally and permanently disabled veteran
45 who meets the requirements of s. 196.081, F.S. The amendment also provides that, if
46 the property appraiser determines that additional documentation proving an affiant's

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1 income is necessary, the property appraiser may request it. This change was effective
2 July 1, 2017, and applies to assessments and administrative reviews beginning in 2018.
3 See Chapter 2017-36, Sections 5 and 59, Laws of Florida (HB 7109).

4
5 Proprietary continuing care facilities. See section 196.1977, F.S.

6
7 Licensed child care facilities located in an enterprise zone. See section 196.095, F.S.

8 9 10 **PART 3: Administrative Reviews of Denials of Property Classifications**

11
12 The Florida Constitution provides for certain “classifications” of property for assessment
13 purposes.

14
15 “Property Classification” or “Classification” means a classification of property for
16 assessment purposes according to applicable statutory criteria, including those in
17 Chapter 193, Part II, F.S., and an assessment of the property at its classified use value.

18
19 “Classified use value” means the value of a property that is based solely on the
20 property’s character or use and based on the applicable statutory criteria, without regard
21 to the property’s highest and best use. See section 192.001(2), F.S.

22
23 The sections below contain information on the administrative review of denials of
24 classifications, including information on the statutory criteria for classifications.

25 26 27 **The Administrative Review Process for Denials of Classifications**

28 Set forth below is a sequence of general procedural steps for Boards and special
29 magistrates to follow in administrative reviews of denials of classifications in order to
30 fulfill the procedural requirements of section 194.301, F.S., and Rule 12D-9.027(4),
31 F.A.C.

32
33 This sequence of steps applies to: the consideration of evidence, the development of
34 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

35
36 *“The board or special magistrate shall not be required to make, at any time during a
37 hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See
38 Rule 12D-9.025(9), F.A.C.

39
40 *“The board or special magistrate has the discretion to determine whether to make such
41 determinations during a hearing or to consider the petition and evidence further after the
42 hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.

43
44 Under Rule 12D-9.027(4), F.A.C., in administrative reviews of denials of classifications,
45 the Board or special magistrate shall follow this sequence of general procedural steps:
46

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- 1 1. Consider the admitted evidence presented by the parties;
2
- 3 2. Identify the particular property classification issue that is the subject of the petition;
4
- 5 3. Identify the statutory criteria that apply to the property classification that was
6 identified as the issue under administrative review;
7
- 8 4. Identify and consider the essential characteristics of the petitioned property or the
9 property owner, as applicable, based on the statutory criteria that apply to the issue
10 under administrative review;
11
- 12 5. Identify and consider the basis used by the property appraiser in issuing the denial
13 of property classification for the petitioned property; and
14
- 15 6. Determine whether the admitted evidence proves by a preponderance of the
16 evidence that the property appraiser's denial is incorrect and the property
17 classification should be granted because all of the applicable statutory criteria are
18 satisfied.
19

20 The Board or special magistrate must decide whether the admitted evidence, regardless
21 of which party presented the evidence, has sufficient weight (in relevance and
22 credibility) to legally justify overturning the property appraiser's original determination
23 and granting the property classification.
24

25 If the admitted evidence proves the petitioner's case by the greater weight of the
26 evidence, the original determination must be overturned and the petition granted.
27

28 If the admitted evidence does not legally justify overturning the property appraiser's
29 original determination, the determination must be upheld.
30
31

Statutory Criteria for Property Classifications

32 The following sections of this module contain information on the statutory criteria that
33 must be met to qualify for the property classifications available in Florida.
34
35

36 * In the case of the more common classifications, this training presents more detail on
37 the applicable statutory criteria.
38

39 * Information on less common classifications not specifically addressed in this training
40 can be found in Chapter 193, Part 2, F.S.
41
42

Statutory Criteria for Different Types of Property Classifications

44 Statutory criteria for the following types of property classifications are presented below.
45
46

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1 Types of Property Classifications

- 2 • Agricultural Property
- 3 • Pollution Control Devices
- 4 • Noncommercial Recreational and Conservation Lands
- 5 • Historic Property
- 6 • High-water Recharge Property
- 7 • Working Waterfront Property
- 8 • Renewable Energy Source Device

11 **Agricultural Property**

12 Authorized in Article VII, Section 4(a), of the Florida Constitution.

14 The agricultural classification is governed by sections 193.451, 193.461, 193.4615, and
15 193.462, F.S.

17 The property owner must apply for classification as agricultural property by March 1.
18 However, section 193.462, Florida Statutes, allows the Board to grant the classification
19 even when an application was not made by the statutory deadline.

21 Qualifying property must be used for “bona fide agricultural purposes,” meaning good
22 faith commercial usage. In determining bona fide agricultural use, the property appraiser
23 may consider the following factors: See section 193.461(3)(b)1., F.S.

- 25 a. The length of time the land has been utilized for bona fide agricultural purposes;
- 27 b. Whether the use has been continuous;
- 29 c. The purchase price paid;
- 31 d. Size, as it relates to specific agricultural use, but a minimum acreage may not be
32 required for agricultural assessment;
- 34 e. Whether an indicated effort has been made to care sufficiently and adequately for
35 the land in accordance with accepted commercial agricultural practices, including,
36 without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted
37 agricultural practices;
- 39 f. Whether the land is under lease and, if so, the effective length, terms, and conditions
40 of the lease; and
- 42 g. Such other factors as may become applicable.

44 “Agricultural Purposes” include but are not limited to: See section 193.461(5), F.S.

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- 1 * Horticulture
- 2 * Floriculture
- 3 * Viticulture
- 4 * Forestry
- 5 * Dairy
- 6 * Livestock
- 7 * Poultry
- 8 * Bees
- 9 * Pisciculture (when the land is used primarily for the production of tropical fish)
- 10 * Aquaculture
- 11 * Sod Farming
- 12 * All forms of farm products as defined in section 823.14(3), F.S., and farm
- 13 production

14

15 Under section 193.461(3)(e), F.S., land that has received an agricultural classification
16 from the value adjustment board or a court of competent jurisdiction is entitled to
17 receive such classification in any subsequent year until: such agricultural use of the land
18 is abandoned or discontinued; the land is diverted to a nonagricultural use; or the land is
19 reclassified as nonagricultural pursuant to section 193.461(4), F.S.

20

21 * In Tilton v. Gardner, 52 So.3d 771 (Fla. 5th DCA 2010), the court, in reviewing a
22 denial of an agricultural classification that had been granted by the value adjustment
23 board in a prior assessment year under subsection 193.461(3)(e), F.S., applied the
24 physical activity test in determining whether record evidence was sufficient to justify
25 continuing the agricultural classification.

26

27 * The Florida Supreme Court has held that the key to determining whether an
28 agricultural classification should be granted is the actual physical activity on the
29 land. See Schultz v. Love PGI Partners, LP, 731 So.2d 1270, 1271 (Fla. 1999).
30 Also, see Straughn v. Tuck, 354 So.2d 368, 370 (Fla. 1977).

31

32

Agricultural Property: Dispersed Water Storage Programs

34 * Legislation enacted in 2014 amended Section 193.461, F.S., to provide that
35 agricultural lands that participate in a dispersed water storage program under a
36 contract with the Department of Environmental Protection or a water management
37 district, which requires flooding of land, will retain the agricultural classification as
38 long as the lands are included in the program or successor programs.

39

40 * The property appraiser will assess these lands as nonproductive agricultural lands.

41

42 * Lands that participate and are diverted from an agricultural use to a nonagricultural
43 use shall be assessed under Section 193.011, F.S.

44

45

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1 **Agricultural Property: Quarantine and Eradication Programs**

2 Agricultural land taken out of production due to a state or federal quarantine or
3 eradication program shall continue to be classified as agricultural property for the
4 duration of such program or successor program. See Section 193.461(7), F.S.

5

6 * If the land in the program lies fallow or is used for non-income producing purposes,
7 the land shall have a de minimus value of no more than \$50 per acre.

8

9 * If the land in the program is used for another permissible agricultural use, the land
10 shall be assessed based on that usage.

11

12 * If the land is converted to a nonagricultural use, it will be assessed as
13 nonagricultural property under section 193.011, F.S.

14

15 **Note:** Legislation enacted in 2016 amended section 193.461(7)(a), F.S., to provide that
16 lands classified for assessment purposes as agricultural lands that a state or federal
17 eradication or quarantine program takes out of production will remain agricultural lands
18 for the remainder of the program. Lands that these programs convert to nonincome-
19 producing uses will continue to be assessed at a minimum value of up to \$50 per acre
20 on a single-year assessment methodology.

21

22 This legislation identified the Citrus Health Response Program as a state or federal
23 eradication or quarantine program, and allows land to retain its agricultural classification
24 for five years after the date of execution of a compliance agreement between the
25 landowner and the Department of Agriculture and Consumer Services (DACCS) or a
26 federal agency, as applicable, for this program or successor programs.

27

28 Lands under these programs that are converted to fallow or otherwise nonincome-
29 producing uses are still agricultural lands assessed at a minimal value of up to \$50 per
30 acre on a single-year assessment methodology while fallow or used for nonincome-
31 producing purposes. Lands under these programs that are replanted in citrus according
32 to the requirements of the compliance agreement are classified as agricultural lands
33 and are assessed at a minimal value of up to \$50 per acre, on a single-year
34 assessment methodology, during the five-year term of agreement.

35

36 See Chapter 2016-88, Sections 1 and 5, Laws of Florida (CS/CS/HB 749).

37

38 **Note:** Legislation enacted in 2018 created section 193.461(7)(c), F.S., to require
39 agricultural lands that incur damage from a natural disaster, for which the Governor
40 declares a state of emergency and results in halting agricultural production, to be
41 classified as agricultural lands for five years following termination of the emergency
42 declaration. However, if the lands are diverted from agricultural use to nonagricultural
43 use during or after the five-year recovery period, the property appraiser must assess the
44 lands at just value under s. 193.011, F.S. This provision applies retroactively to natural
45 disasters that occurred on or after July 1, 2017. See Chapter 2018-84, Section 1, Laws of
46 Florida (CS/CS/SB 740).

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1
2 **Note:** Legislation enacted in 2018 created section 193.461(8), F.S., to provide that
3 lands classified as agricultural, which are not being used for agricultural production due
4 to a hurricane that made landfall in this state during 2017, must continue to be classified
5 as agricultural through December 31, 2022, unless the lands are converted to a
6 nonagricultural use. Lands converted to nonagricultural use are not covered by this
7 subsection and must be assessed as otherwise provided by law. This amendment
8 applies to the 2018 tax roll. See Chapter 2018-118, Sections 12 and 13, Laws of Florida
9 (CS/HB 7087).

Agricultural Property: Special Types

10
11
12 See Sections 193.451 and 193.4615, F.S.

13 In addition to the classified use assessments of agricultural land discussed previously,
14 there are additional provisions which address specific kinds of agricultural property.

15
16
17 These provisions usually deal with the assessment of tangible personal property and
18 instruct that said property should either have no value placed upon it or that it should be
19 valued as salvage.

20
21 Items with no value:

- 22 * Growing annual crops
- 23 * Nonbearing fruit trees
- 24 * Raw agricultural products (until offered for sale)

25
26 Items valued as salvage:

- 27 * Citrus grading and classification equipment leased from the Department of
28 Agriculture
- 29 * Obsolete agricultural equipment

Pollution Control Devices

30
31
32 This classification is governed by Section 193.621, F.S., which:

- 33 * States that pollution control devices installed in manufacturing or industrial plants or
34 installations shall be valued as salvage.
- 35 * Provides that demolition and reconstruction of part of such a facility for the purpose
36 of reducing pollution, and which does not substantially increase the productivity of
37 the facility, shall not increase the facility's assessed value.
- 38 * Allows the property appraiser to seek a recommendation from the Department of
39 Environmental Protection as to what constitutes pollution control.
- 40 * Allows the Department of Environmental Protection to promulgate rules concerning
41 this exemption.
- 42 * Allows the property appraiser to seek a recommendation from the Department of
43 Environmental Protection as to what constitutes pollution control.
- 44 * Allows the Department of Environmental Protection to promulgate rules concerning
45 this exemption.
- 46

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Noncommercial Recreation and Conservation Lands

This classification is governed by Section 193.501, F.S.

To receive this classification, property must be subject to a conservation easement, qualified as environmentally endangered land, designated as conservation land, or used for outdoor recreational or park purposes.

In addition, the owner must convey all rights to develop the property to a public entity or enter into a covenant with a public entity, for a period no less than ten years, providing that the property shall be subject to one or more of the conservation restrictions provided in Section 704.06(1), F.S. and shall not be used by the owner except for outdoor recreational purposes.

If the covenant or conveyance extends for more than ten years, the property shall be valued considering no factors other than those relative to its value for the present use as restricted by the covenant or conveyance.

If the covenant has less than ten years left, the property will be valued at just value considering the restrictions imposed by the covenant.

If the owner seeks to end the covenant before its expiration, he or she will be liable for all deferred tax liability plus interest.

Historic Property

There are two separate sections of the Florida Statutes which enact two separate programs for historic properties.

* Section 193.503, F.S., applies to historic properties used for commercial or certain nonprofit purposes.

* Section 193.505, F.S., deals with other historically significant property.

Historic Property: Section 193.503, F.S.

The criteria for qualifying for this classification are as follows:

* Classification under this section must be authorized by the city or county, in which case it applies to that entity's tax levy;

* An application for classification must be filed by March 1;

* The property must be used for commercial purposes or by a not-for-profit organization under Section 501(c)(3) or (6) of the Internal Revenue Code;

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- 1
- 2 * The property must be: listed in the National Register of Historic Places, part of a
- 3 National Register Historic District, or designated as historic or part of a historic
- 4 district under a local preservation ordinance;
- 5
- 6 * The property must be maintained in good condition to preserve historic value; and
- 7
- 8 * The property must be open to the public 40 hours per week for 45 weeks per year or
- 9 for 1800 hours annually.

10
11 The classification is lost if the owner fails to continue to meet these criteria.

12 13 14 **Historic Property: Section 193.505, F.S.**

15 The criteria for qualifying for this classification are as follows:

- 16
- 17 * The property must be: on the National Register of Historic places, in a certified
- 18 locally designated historic district, or found to be historic by the Division of Historical
- 19 Resources or a local historic preservation board;
- 20
- 21 * The owner must convey all rights to develop the property to the county governing
- 22 board or enter into a covenant for a period of no less than ten years providing that
- 23 the property shall not be used for any purpose inconsistent with historic preservation
- 24 or the historic qualities of the property;
- 25
- 26 * The county must agree to accept the development right or covenant and must
- 27 designate the property as historic by formal resolution;
- 28
- 29 * The county may not transfer development rights or use them in a manner
- 30 inconsistent with historic preservation or the historic qualities of the property;
- 31
- 32 * If the owner seeks to end the covenant before its expiration, he or she will be liable
- 33 for all deferred tax liability plus interest; and
- 34
- 35 * When the covenant ends, the owner is responsible for all deferred tax liability plus
- 36 interest.
- 37

38 39 **High-water Recharge Property**

40 The county or city must adopt an ordinance allowing for this classification. See Section

41 193.625, F.S.

- 42
- 43 * The ordinance shall provide the formula for assessing property which qualifies for
- 44 this classification.
- 45
- 46 * Land must be used for “bona fide high-water recharge purposes.”

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- 1
2 * Application for this classification must be made by March 1.
3
4 * The land owner must contract to use the land for high-water recharge purposes for
5 five years or more.
6
7 To qualify as being used for “bona fide high-water recharge purposes”: See Subsection
8 193.625(3)(b), F.S.
9
10 * The land use must have been continuous.
11
12 * The land use must be vacant residential, vacant commercial, vacant industrial,
13 vacant institutional, nonagricultural, or single-family residential.
14
15 * The maintenance of one single-family residential dwelling on part of the land does
16 not in itself preclude a high-water recharge classification.
17
18 * The land must be located within a prime groundwater recharge area or in an area
19 considered by the appropriate water management district to supply significant
20 groundwater recharge.
21
22 * Significant groundwater recharge shall be assessed by the appropriate water
23 management district on the basis of hydrologic characteristics of the soils and
24 underlying geologic formations.
25
26 * The land must not be receiving any other special classification.
27
28 * There must not be in the vicinity of the land any activity that has the potential to
29 contaminate the ground water, including, but not limited to, the presence of:
30
31 * Toxic or hazardous substances;
32 * Free-flowing saline artesian wells;
33 * Drainage wells;
34 * Underground storage tanks; or
35 * Any potential pollution source existing on a property that drains to the
36 property seeking the high-water recharge classification.
37
38 * The parcel of land must be at least ten acres.
39
40

Working Waterfront Property

42 The Florida Constitution sets forth criteria for classifying and valuing working waterfront
43 property.
44

45 The provisions of Amendment 6, working waterfronts, have been placed in the Florida
46 Constitution at Article VII, Section (4)(j), effective for the 2010 assessment year.

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1
2 These provisions state as follows:

3
4 *“(j)(1) The assessment of the following working waterfront properties shall*
5 *be based upon the current use of the property:*

6
7 *a. Land used predominantly for commercial fishing purposes.*

8
9 *b. Land that is accessible to the public and used for vessel launches*
10 *into waters that are navigable.*

11
12 *c. Marinas and drystacks that are open to the public.*

13
14 *d. Water-dependent marine manufacturing facilities, commercial*
15 *fishing facilities, and marine vessel construction and repair*
16 *facilities and their support activities.*

17
18 *(2) The assessment benefit provided by this subsection is subject to*
19 *conditions and limitations and reasonable definitions as specified by*
20 *the legislature by general law.”*

21
22 The constitutional amendment on working waterfronts is self-executing with
23 authorization for the Legislature to elaborate by general law.

24
25 In the 2009 and 2010 sessions, the Legislature considered bills that did not pass but
26 that would have contained guidance for classifying and valuing working waterfront
27 property. These bills would have applied to the 2010 tax year if they had become law.

28
29 Amendment 6, creating classification of property used for working waterfronts, is
30 effective for the 2010 year in the absence of legislation.

31 32 33 **Renewable Energy Source Device Classification**

34 * Legislation enacted in 2013 created section 193.624, F.S., to provide for
35 assessment of a "renewable energy source device" installed on or after January 1,
36 2013, to new and existing residential real property.

37
38 * When determining the assessed value of real property used for residential purposes,
39 an increase in the just value of the property attributable to the installation of a
40 renewable energy source device may not be considered.

41
42 * This requirement is an exception to certain provisions relating to assessment of
43 changes, additions, or improvements in sections 193.155 and 193.1554, F.S.

44

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1 * This legislation became effective July 1, 2013 and applies to assessments and
2 administrative reviews beginning in 2014. See Chapter 2013-77, Sections 1, 2, and 3,
3 Laws of Florida (HB 277).

4
5 **Note:** Legislation enacted in 2017 amended section 193.624, F.S., to provide, for
6 nonresidential real property, that 80 percent of the just value attributable to a renewable
7 energy source device may not be considered in determining the assessed value of the
8 property; this provision applies to devices installed on nonresidential property on or after
9 January 1, 2018, except in a fiscally constrained county for which application for
10 comprehensive plan amendment or planned unit development zoning is made by
11 December 31, 2017. This change became effective July 1, 2017, and applies to
12 assessments and administrative reviews beginning in 2018. See Chapter 2017-118,
13 Sections 2 and 8, Laws of Florida (CS/SB 90).

14 15 16 **PART 4: Administrative Reviews of Determinations of Changes of** 17 **Ownership or Control or Qualifying Improvement**

18 19 20 **Assessment Increase Limitation for Homestead Real Property**

21 Homestead real property shall be assessed at just value on the January 1 following a
22 change of ownership. See Section 193.155, F.S.

23
24 Under Section 193.155(3)(a), F.S., a change of ownership means any sale, foreclosure,
25 or transfer of legal title or beneficial title in equity to any person, except:

- 26
27 1. If after transfer, the same person is entitled to the homestead exemption as was
28 previously entitled and the transfer:
29
30 a. Is to correct an error; or
31
32 b. Is between legal and equitable title; or
33
34 c. Is by an instrument in which the owner is both grantor and grantee of the real
35 property and one or more other individuals are additionally named as grantee.
36 However, a change of ownership occurs if such individual applies for a
37 homestead exemption on the property; or
38

39 **Note:** Legislation enacted in 2021 added subparagraph d:

- 40 d. Is by means of an instrument in which the owner entitled to the homestead
41 exemption is listed as both grantor and grantee of the real property and one or
42 more other individuals, all of whom held title as joint tenants with rights of
43 survivorship with the owner, are named only as grantors and are removed from
44 the title; or

45 See Chapter 2021-31, Section 2, Laws of Florida, (HB 7061), effective July 1, 2021.
46

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1 **Note:** Legislation enacted in 2013 added what is now subparagraph e:

- 2 e. if the transfer is to a person who is entitled to the homestead exemption both
3 before and after the transfer and the person is a lessee entitled to the
4 homestead exemption under section 196.041(1), F.S.

5 See Chapter 2013-72, Section 4, Laws of Florida (SB 1830).
6

7 2. If the transfer is between husband and wife including a change or transfer to a
8 surviving spouse or a transfer due to a dissolution of marriage; or
9

10 3. If the transfer occurs by operation of law under Section 732.401, F.S.; or
11

12 4. If on the death of the owner, the transfer is between the owner and another who
13 is a permanent resident and is legally or naturally dependent upon the owner; or
14

15 **Note:** Legislation enacted in 2021 added subparagraph 5.:

16 5. The transfer occurs with respect to a property where all of the following apply:

17 a. Multiple owners hold title as joint tenants with rights of survivorship;

18 b. One or more owners were entitled to and received the homestead exemption
19 on the property;

20 c. The death of one or more owners occurs; and

21 d. Subsequent to the transfer, the surviving owner or owners previously entitled to
22 and receiving the homestead exemption continue to be entitled to and receive
23 the homestead exemption.

24 See Chapter 2021-31, Section 2, Laws of Florida, (HB 7061), effective July 1, 2021.
25
26

27 **Assessment Increase Limitation for Non-Homestead Real Property**

28 The types of property eligible for the 10 percent cap are provided under Section
29 193.1554, F.S., and Section 193.1555, F.S.
30

31 Section 193.1554, F.S., relates to the assessment of non-homesteaded residential
32 property that contains nine or fewer dwelling units that does not receive a homestead
33 exemption under Section 196.031, F.S., including vacant property zoned and platted for
34 residential use.
35

36 Section 193.1555, F.S., relates to residential property with 10 or more units and to non-
37 residential real property.
38

39 “Non-residential real property” means real property that is not subject to the assessment
40 limitations set forth in subsection 4(a), (b), (c), (d), or (g), Article VII of the Florida
41 Constitution. This involves property classified agricultural, high-water recharge, non-
42 commercial recreational, conservation, and homestead limited increase property.
43

44 When ownership or control of the property changes, the property is subject to
45 reassessment at just value.
46

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1 Also, when a qualifying improvement is made on a non-homestead property that has 10
2 or more dwelling units, or is non-residential property, under Section 193.1555(5), F.S.,
3 the property is required to be assessed at just value as of January 1 of the year following
4 the qualifying improvement.

5
6 A qualifying improvement means any substantially completed improvement that increases
7 the just value of the property by at least 25 percent. See section 193.1555(5)(a), F.S.

8
9 “Improvement” means an addition or change to land or buildings which increases their value
10 and is more than a repair or a replacement. See section 193.1555(1)(b), F.S.

11
12 A person or entity that owns non-homestead property subject to receiving the 10
13 percent assessment increase limitation under Sections 193.1554 or 193.1555, F.S.,
14 must notify the property appraiser of the county where the property is located of any
15 change of ownership or control as defined in Sections 193.1554(5) and 193.1555(5),
16 F.S. See section 193.1556, F.S.

17
18 Rule 12D-8.00659, F.A.C., (Notice of Change of Ownership or Control of Non-
19 Homestead Property) contains detailed provisions explaining the change in ownership
20 and control. Forms are included for the owner to notify the property appraiser as
21 provided in sections 193.1554 and 193.1555, F.S.

22
23
24

1 **Module 10:**
2 **Administrative Reviews of**
3 **Assessment Difference Transfers and Tax Deferrals**
4

5 Training Module 10 addresses the following topics:
6

7 **PART 1**

8 **Administrative Reviews of Assessment Difference Transfers**

- 9 • Overview of Assessment Difference Transfers (Portability)
10 • Petitions on Determinations Made in the New Homestead County
11 • Petitions on Determinations Made in the Previous Homestead County
12 • Procedures for a Hearing in the Previous Homestead County
13 • Procedures for a Cross-county Hearing in the New Homestead County
14 • Statutory Criteria for Assessment Difference Transfers
15 • The Administrative Review Process for Assessment Difference Transfers
16

17 **PART 2**

18 **Administrative Reviews of Tax Deferrals and Penalties**

- 19 • Overview of Tax Deferrals
20 • Overview of Penalties on Tax Deferrals
21 • Unique Aspects of Petitions on Tax Deferrals and Penalties
22 • The Administrative Review Process for Tax Deferrals and Penalties
23
24

25 **Learning Objectives**

26 After completing this training module, the learner should be able to:
27

- 28 • Recognize and apply the definition of “assessment difference”
29 • Recognize and apply the definition of “portability” and “assessment difference
30 transfer”
31 • Identify the two general locations where portability may apply
32 • Recognize where a portability petition must be filed
33 • Identify and apply the requirements for petitions on determinations made in the new
34 homestead county
35 • Identify and apply the requirements for petitions on determinations made in the
36 previous homestead county
37 • Recognize and apply the procedures for a hearing in the previous homestead county
38 • Identify and apply the procedures for a cross-county hearing in the new homestead
39 county
40 • Identify and apply the statutory criteria for assessment difference transfers
41 • Apply the administrative review process for assessment difference transfers
42 • Recognize how tax deferrals differ from exemptions
43 • Identify the property types for which tax deferrals could apply
44 • Identify when penalties on tax deferrals apply

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- 1 • Recognize the unique aspects of petitions on tax deferrals and penalties
- 2 • Apply the administrative review process for tax deferrals and penalties

PART 1

Overview of Assessment Difference Transfers (Portability)

8 Under a constitutional amendment passed in January 2008, along with 2008 legislation,
9 a taxpayer may qualify to transfer the difference between the just value and assessed
10 value of his or her previous homestead property to a new homestead property.

11
12 “Assessment difference” means the difference between just value and assessed value
13 that can be transferred from a previous homestead property to a new homestead
14 property.

15
16 “Portability” and “assessment difference transfer” mean the assessment, at less than
17 just value, of a new homestead property based on the transfer of an assessment
18 difference from a previous homestead property after the previous homestead has been
19 abandoned.

20
21 Subsection 193.155(8), F.S., sets time limits for qualifying for an assessment difference
22 transfer and sets limitations on the amount of the assessment difference that can be
23 transferred.

24
25 To qualify for transfer of an assessment difference, a homestead property owner must
26 timely file a portability application with the property appraiser on a separate form.

27
28 * This portability application should be filed along with the homestead exemption
29 application for the new residence.

30
31 Portability may apply to a new homestead property located in the same county as the
32 previous homestead property or may apply to a new homestead property located in a
33 county other than the previous homestead county.

34
35 When a property owner applies for portability in a county other than the previous
36 homestead county, the property appraiser in the previous homestead county is required
37 to provide the amount of the assessment difference for the previous homestead to the
38 property appraiser in the new homestead county.

39
40 * Therefore, in cases where two counties are involved, the property appraiser in each
41 county must take actions that determine whether portability is granted and determine
42 the amount of the transfer.

43
44 Some of the criteria for qualifying for portability and calculating allowable amounts for
45 transfer are complex, especially when applied to multiple owners who separate, join

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1 together, or transfer from one county to another.
2

3 The shares of the assessment difference cannot be sold, transferred, or pledged to any
4 taxpayer, except by sworn irrevocable designation of ownership shares between
5 husband and wife as described in Chapter 2012-193, Section 5, Laws of Florida.
6

7 * In the case of a husband and wife abandoning jointly titled property, the husband
8 and wife may designate the ownership share to be attributed to each spouse by
9 following the procedure in paragraph (f) of subsection 193.155(8), F.S. To qualify to
10 make such a designation, the husband and wife must be married on or before the
11 date they abandon the jointly owned property. See Chapter 2012-193, Section 5, Laws
12 of Florida, amending subsection 193.155(8)(d), F.S.
13

14 * A husband and wife abandoning jointly titled property and who wish to designate the
15 ownership share of the previous homestead to be attributed to each person for
16 purposes of subsection 193.155(8)(d), F.S., must file a form with the property
17 appraiser in the previous homestead county. The filed form must include a sworn
18 statement by each person designating the ownership share of the abandoned
19 homestead to be attributed to each person for purposes of portability. Such a
20 designation of ownership shares, once filed with the previous property appraiser, is
21 irrevocable and cannot be changed. See Chapter 2012-193, Section 5, Laws of Florida,
22 creating subsection 193.155(8)(f), F.S.
23

24 More information on the applicable criteria is presented later in this module in a section
25 titled "Statutory Criteria for Assessment Difference Transfers."
26

27 Rule 12D-9.028, F.A.C., applies to the review of denials of assessment limitation
28 difference transfers and to the amount of an assessment limitation difference transfer.
29

30 No adjustment to the just, assessed, or taxable value of the previous homestead parcel
31 may be made pursuant to a petition under Rule 12D-9.028, F.A.C.
32
33

Petitions on Determinations Made in the New Homestead County

34 A portability petition must always be filed in the county where the new homestead
35 property is located.
36
37

38 However, in cases where two counties are involved, the law allows the petitioner to
39 appeal the actions of the property appraiser in the new homestead county and the
40 actions of the property appraiser in the previous homestead county.
41

42 If only a part of a transfer of assessment difference is granted by a property appraiser,
43 the notice of proposed property taxes (TRIM notice) functions as notice of the
44 taxpayer's right to appeal to the Board. See Rule 12D-9.028(2), F.A.C.
45

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1 The Department has provided Form DR-490PORT for property appraisers to use in
2 notifying taxpayers of denials of portability.

3
4 To appeal either a denial of a transfer or the amount of a transfer, a taxpayer may file a
5 petition with the Board in the new homestead county using Form DR-486PORT. See
6 Rule 12D-9.028(2) and (3), F.A.C.

7
8 Form DR-486PORT is available on the Department's website at the following link:
9 <http://floridarevenue.com/property/Pages/VAB.aspx>

10
11 This petition may be filed at any time during the taxable year by the 25th day following
12 the mailing of the notice of proposed property taxes as provided in Section 194.011,
13 F.S. See Rule 12D-9.028(2), F.A.C.

14
15 In hearings held in the new homestead county, the Board or special magistrate shall
16 review the application and accompanying evidence presented to the property appraiser
17 by the petitioner and shall hear the petition for portability. See Rule 12D-9.028(3), F.A.C.

18
19 Portability petitions shall be heard by an attorney special magistrate if the Board uses
20 special magistrates. See Rule 12D-9.028(3), F.A.C.

21
22 NOTE: When the petitioner indicates on the completed petition that he or she is
23 appealing the actions of the property appraiser in the previous homestead county, it is
24 necessary for two hearings to be held.

25
26 * The first of these two hearings must be held in the county where the previous
27 homestead property is located, and the second hearing must be held in the county
28 where the new homestead property is located.

Petitions on Determinations Made in the Previous Homestead County

31
32 Under Rule 12D-9.028(5), F.A.C., the petitioner may file a petition in the new
33 homestead county when the petitioner does not agree with either:

- 34
35 1. The denial by the property appraiser in the previous homestead county of an
36 assessment limitation difference; or
37
38 2. The amount of the assessment limitation difference as determined by the property
39 appraiser in the previous homestead county.

40
41 A taxpayer who wants to appeal the action of the property appraiser in the previous
42 homestead county must so indicate by checking the appropriate box on the portability
43 petition (Form DR-486PORT) filed with the Board clerk in the new homestead county.
44 See Rule 12D-9.028(4), F.A.C.

45

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1 Upon receiving the completed petition from the taxpayer, the Board clerk in the new
2 homestead county shall complete Form DR-486XCO and send it, along with the
3 taxpayer's petition, to the Board clerk in the previous homestead county.
4

5 When the Board clerk in the previous homestead county receives the completed Form
6 DR-486XCO and taxpayer's petition, that Board clerk must file these two documents as
7 a petition to the Board in the previous homestead county. See Rule 12D-9.028(6)(c),
8 F.A.C.
9

10 Form DR-486XCO is available on the Department's website at the following link:
11 <http://floridarevenue.com/property/Pages/VAB.aspx>
12

13 * No filing fee is required in the previous homestead county. See Rule 12D-9.028(6)(c),
14 F.A.C.
15

16 If a Form DR-486XCO is properly filed, it operates as a timely petition and creates an
17 appeal to the Board in the previous homestead county on all issues surrounding the
18 previous assessment difference for the taxpayer involved. See Rule 12D-9.028(5) and
19 (6)(a), F.A.C.
20

21 Then, under Rule 12D-9.028(6)(b), F.A.C., the Board clerk in the previous homestead
22 county shall set the petition for hearing and send a notice of hearing to:
23

- 24 1. The petitioner(s);
- 25
- 26 2. The property appraiser in the previous homestead county; and
- 27
- 28 3. The property appraiser in the new homestead county.
29

30 Then, the Board or special magistrate in the previous homestead county shall hear the
31 petition.
32

33 * If the Board in the previous homestead county has already adjourned, it shall
34 reconvene to ensure that the petition is heard and a final decision is issued.
35

36 A taxpayer may not petition to have the just, assessed, or taxable value of the previous
37 homestead changed. See Rule 12D-9.028(6)(a), F.A.C.
38

39 NOTE: Unless the petitioner indicates on the completed petition that he or she is
40 appealing the actions of the property appraiser in the previous homestead county, it is
41 not necessary to send the petition to the Board clerk in the previous homestead county
42 or to hold a hearing in the previous homestead county.
43
44

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Procedures for a Hearing in the Previous Homestead County

If the Board in the previous homestead county uses special magistrates, the petition shall be heard by an attorney special magistrate. See Rule 12D-9.028(6)(d), F.A.C.

The petitioner may attend such hearing and present evidence, but need not do so. See Rule 12D-9.028(6)(d), F.A.C.

If the petitioner does not appear at the hearing, the hearing shall go forward. See Rule 12D-9.028(6)(d), F.A.C.

The Board or special magistrate shall obtain the petition file from the Board clerk. See Rule 12D-9.028(6)(d), F.A.C.

The Board or special magistrate shall consider deeds, property appraiser records that do not violate confidentiality requirements, and other documents that are admissible evidence. See Rule 12D-9.028(6)(d), F.A.C.

The petitioner may submit a written statement for review and consideration by the Board or special magistrate explaining why the assessment difference transfer should be granted based on applications and other documents and records submitted by the petitioner. See Rule 12D-9.028(6)(d), F.A.C.

The Board in the previous homestead county shall issue a decision, and the Board clerk shall send a copy of the decision to the Board clerk in the new homestead county. See Rule 12D-9.028(6)(e), F.A.C.

Procedures for a Cross-county Hearing in the New Homestead County

When the Board clerk in the new homestead county receives the decision of the Board in the previous homestead county, the Board clerk must schedule and send notice to the parties of a hearing before the Board or special magistrate in the new homestead county.

The Board in the new homestead county may not hold its hearing until it has received the decision from the Board in the previous homestead county. See Rule 12D-9.028(6)(f), F.A.C.

In hearing the petition, the Board or special magistrate in the new homestead county shall consider the decision of the Board in the previous homestead county on the issues pertaining to the previous homestead and on the amount of any assessment difference for which the petitioner qualifies. See Rule 12D-9.028(6)(f), F.A.C.

The consideration or adjustment of the just, assessed, or taxable value of the previous homestead property is not authorized. See Rule 12D-9.028(7), F.A.C.

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Statutory Criteria for Assessment Difference Transfers

Statutory criteria for assessment difference transfers are contained in Subsection 193.155(8), F.S.

See also Rule 12D-8.0065, F.A.C., Transfer of Homestead Assessment Difference; “Portability;” Sworn Statement Required; Denials; Late Applications.

The amount of the assessment difference is transferred as a reduction to the just value of the interest owned by persons that qualify for and receive homestead exemption on a new homestead property.

The portability applicant must establish a new homestead on the new residence by January 1 of the year for which the applicant applies for portability.

Note: Legislation was enacted in 2018 creating section 193.155(8)(m), F.S., to provide, for purposes of the portability assessment reduction, that an owner of homestead property that was significantly damaged or destroyed as a result of a named tropical storm or hurricane, may elect, in the calendar year following the named tropical storm or hurricane, to have the significantly damaged or destroyed homestead deemed to have been abandoned as of the date of the named tropical storm or hurricane, even though the owner received a homestead exemption on the property as of January 1 of the year immediately following the named tropical storm or hurricane. This election is available only if the owner establishes a new homestead as of January 1 of the second year immediately following the storm or hurricane. This provision applies to homestead property damaged or destroyed on or after January 1, 2017. See Chapter 2018-118, Section 9, Laws of Florida (CS/HB 7087).

If the applicant qualifies for portability, the assessment difference can be transferred, with certain limits, from a previous homestead that was abandoned after January 1 in either of the two preceding years.

Where multiple owners abandon a previous homestead and establish one or more new homesteads, Subsection 193.155(8), F.S., provides criteria for determining the relative shares of the transfer for each of the owners.

When two or more people establish a new homestead, the amount that can be transferred is limited to the highest difference between just value and assessed value from any of the new owners’ previous homesteads.

Additional provisions address how portability works when there are multiple owners. See section 193.155(8), F.S., amended by Chapter 2012-193, Section 5, Laws of Florida. Also, see Rule 12D-8.0065, F.A.C.

Two limitations of an assessment difference transfer are as follows:

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- 1 1. The maximum amount that can be transferred is \$500,000.
- 2
- 3 2. If the new homestead is lower in value than the old homestead, there is a
- 4 percentage limitation on the amount that can be transferred as described in
- 5 section 193.155(8)(b), F.S., and Rule 12D-8.0065, F.A.C.
- 6
- 7

8 **The Administrative Review Process for Assessment Difference**

9 **Transfers**

10 The Board or special magistrate is not authorized to adjust the just, assessed, or

11 taxable value of the previous homestead property. See Rule 12D-9.028(1), F.A.C.

12

13 Under Rule 12D-9.027(4), F.A.C., in administrative reviews of assessment difference

14 transfers, the Board or special magistrate shall follow this sequence of general

15 procedural steps:

16

- 17 1. Consider the admitted evidence presented by the parties.
- 18
- 19 2. Identify the particular assessment difference transfer issue that is the subject of the
- 20 petition.
- 21
- 22 3. Identify the statutory criteria that apply to the portability assessment difference
- 23 transfer that was identified as the issue under administrative review.
- 24
- 25 4. Identify and consider the essential characteristics of the petitioned property or the
- 26 property owner, as applicable, based on the statutory criteria that apply to the issue
- 27 under administrative review.
- 28
- 29 5. Identify and consider the basis used by the property appraiser in issuing the denial
- 30 or determining the amount of the assessment difference transfer for the petitioned
- 31 property.
- 32
- 33 6. Determine whether the admitted evidence proves by a preponderance of the
- 34 evidence that the property appraiser's denial or partial denial is incorrect and the
- 35 portability assessment difference transfer should be granted because all of the
- 36 applicable statutory criteria are satisfied.
- 37

38 The Board or special magistrate must decide whether the admitted evidence, regardless

39 of which party presented the evidence, has sufficient weight (in relevance and

40 credibility) to legally justify overturning the property appraiser's original determination

41 and granting the portability assessment difference transfer.

42

43 If the admitted evidence proves the petitioner's case by the greater weight of the

44 evidence, the original determination must be overturned and the petition granted.

45

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1 If the admitted evidence does not legally justify overturning the property appraiser's
2 original determination, the determination must be upheld.

PART 2

Overview of Tax Deferrals

8 Hearings on the denial of a tax deferral require the petitioner to show, by a
9 preponderance of the evidence, that he or she has met the statutory criteria for being
10 granted a deferral.

12 Tax deferrals differ from exemptions and classifications in that they do not reduce the
13 amount of taxes due on the property, but rather tax deferrals allow the taxpayer to defer
14 paying those taxes until a later time.

16 Essentially, a qualifying taxpayer may defer payment of all or part of the property taxes
17 until such time as the ownership or use of the land changes, at which time all of the
18 unpaid deferred taxes become due and payable.

20 Currently, there are three types of property tax deferrals, as listed below with references
21 to applicable sections of Florida Statutes.

23 The 2011 Legislature rewrote the laws pertaining to tax deferrals.

25 * The three types of homestead deferrals are now handled together in some statutory
26 sections and separately in others.

28 * See Chapter 2011-151 Laws of Florida (SB 478) effective July 1, 2011.

30 * The legislation created or amended sections 197.2421, 197.2423, 197.2425
31 (formerly 197.253), 194.243 (relating to homestead), 197.252 (relating to
32 homestead), 197.2524 (relating to working waterfront and affordable housing),
33 197.2526 (relating to affordable housing), 197.254, 197.262, 197.263, 197.272,
34 197.282, 197.292, and 197.301 (relating to penalties).

36 * The legislation repealed sections 197.242, 197.304, 197.3041, 197.3042, 197.3043,
37 197.3044, 197.3045, 197.3046, 197.3047, 197.307, 197.3072, 197.3073, 197.3074,
38 197.3075, 197.3076, 197.3077, 197.3078, and 197.3079, Florida Statutes. See
39 Chapter 2011-151, Section 59, Laws of Florida.

Overview of Penalties on Tax Deferrals

43 If a taxpayer who applies for a tax deferral willfully files incorrect information, either in
44 the application or in another required return, all deferred taxes and interest become due
45 and a penalty is also imposed.

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1
2 This penalty may be appealed to the Board.

3
4 The burden of proof in these cases is on the petitioner and the standard of proof
5 remains preponderance of the evidence.

6 7 8 **Unique Aspects of Petitions on Tax Deferrals and Penalties**

9 Tax deferrals and associated penalties are administered by the tax collector and not by
10 the property appraiser.

11
12 * Therefore, the tax collector is a party to these types of petitions and the property
13 appraiser is not.

14
15 Petitions to the Board on these matters are made on Form DR-486DP and not on Form
16 DR-486.

17
18 A petition regarding a tax deferral shall be considered timely if it is filed within 30 days
19 after the denial is mailed. See section 197.2425, F.S., created by Chapter 2011-151, Section
20 13, Laws of Florida.

21
22 A petition appealing penalties imposed for providing incorrect information regarding a
23 tax deferral is considered timely if filed within 30 days after the penalties are imposed by
24 the tax collector.

25 26 27 **The Administrative Review Process for Tax Deferrals and Penalties**

28 The Department does not have detailed rules for administrative reviews of deferrals and
29 penalties involving tax collectors.

30
31 Rather, Rule 12D-9.036, F.A.C., provides procedures for petitions on denials of tax
32 deferrals, stating the following:

33
34 *“(1) The references in these rules to the tax collector are for the handling of petitions of*
35 *denials of tax deferrals under Section 197.2425, F.S., and petitions of penalties*
36 *imposed under Section 197.301, F.S.”*

37
38 *“(2) To the extent possible where the context will permit, such petitions shall be handled*
39 *procedurally under this rule chapter in the same manner as denials of exemptions.”*

40
41 The procedures for administrative reviews of denials of deferrals and penalties include
42 those provided for exemptions in Rule 12D-9.027(4)(b) through (g), F.A.C.

43
44 * However, the procedures provided in Rule 12D-9.027(4)(a), F.A.C., specifically do
45 NOT apply to administrative reviews regarding deferrals and penalties.

1
2
3 **Module 11:**
4 **Requirements for Written Decisions**

5 **Training Module 11 addresses the following topics:**

- 6 • Written Decisions and Taxpayer Rights
7 • General Requirements for Written Decisions
8 • Required Forms for Written Decisions
9 • Statements on Board Decisions by the Auditor General
10 • Statements on Board Decisions by Florida Courts
11 • Sufficiency of Evidence
12 • Evaluation of the Relevance of Evidence
13 • Evaluation of the Credibility of Evidence
14 • Requirements for Findings of Fact
15 • Requirements for Conclusions of Law
16 • Specific Requirements for Findings of Fact and Conclusions of Law
17 • Reasons for Recommended Decisions and Final Decisions
18
19

20 **Learning Objectives**

21 After completing this training module, the learner should be able to:

- 22
23 • Apply taxpayer rights to written decisions
24 • Identify the conditions under which a written decision is required
25 • Recognize and properly complete the required forms for written decisions
26 • Recognize statements from the Auditor General and Florida courts on findings of fact
27 and conclusions of law
28 • Evaluate the relevance of evidence
29 • Evaluate the credibility of evidence
30 • Identify and apply the requirements for findings of fact
31 • Identify and apply the requirements for conclusions of law
32 • Identify and apply the specific requirements for findings of fact and conclusions of
33 law
34 • Recognize the requirements for reasons for upholding or overturning the
35 assessment
36
37

38 **Written Decisions and Taxpayer Rights**

39 Florida Statutes provide the following taxpayer right: *“The right to be sent a timely*
40 *written decision by the value adjustment board containing findings of fact and*
41 *conclusions of law and reasons for upholding or overturning the determination of the*
42 *property appraiser.”* See Subsections 192.0105(2)(g) and 194.034(2), F.S.
43

44 The special magistrate and Board clerk shall observe the petitioner’s right to be sent a
45 timely written recommended decision containing proposed findings of fact and proposed

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1 conclusions of law and reasons for upholding or overturning the determination of the
2 property appraiser. See Rule 12D-9.030(1), F.A.C.

3
4 The taxpayer has the right to be issued a timely written decision by the Board within 20
5 calendar days of the last day the Board is in session pursuant to Section 194.032, F.S.
6 See Rule 12D-9.001(2)(k), F.A.C.

7
8 The Florida Supreme Court has stated that the lawful issuance of findings of fact and
9 conclusions of law by the Board is a requirement of due process. See Miller v. Nolte, 453
10 So.2d 397 (Fla. 1984).

11 12 13 **General Requirements for Written Decisions**

14 In the value adjustment board process, written decisions include the following:

- 15
16 1. Remand decisions produced by the Board or special magistrate, as applicable;
- 17
18 2. Recommended decisions produced by special magistrates; and
- 19
20 3. Final decisions produced by the value adjustment board.

21
22 As used in this training, the terms “findings of fact” and “conclusions of law” include
23 proposed findings of fact and proposed conclusions of law produced by special
24 magistrates in their recommended decisions. See Rule 12D-9.030(5), F.A.C.

25
26 When required under Rule 12D-9.029, F.A.C., the Board or special magistrate shall
27 produce a written remand decision that contains findings of fact, conclusions of law, and
28 appropriate directions to the property appraiser. See Rules 12D-9.029(4) and (6), F.A.C.

29
30 For each petition not withdrawn or settled, special magistrates shall produce a written
31 recommended decision that contains findings of fact, conclusions of law, and reasons
32 for upholding or overturning the property appraiser’s determination. See Rule 12D-
33 9.030(1), F.A.C.

34
35 For each petition not withdrawn or settled, the Board shall produce a written final
36 decision that contains findings of fact, conclusions of law, and reasons for upholding or
37 overturning the property appraiser’s determination. See Rule 12D-9.032(1)(a), F.A.C.

38
39 * For all withdrawn or settled petitions, a special magistrate shall not produce a
40 recommended decision and the Board shall not produce a final decision. See Rule
41 12D-9.021(5), F.A.C.

42
43 In each recommended decision and in each final decision, the conclusions of law must
44 be based on findings of fact. For each of the statutory criteria for the issue under
45 administrative review, the findings of fact must identify the corresponding admitted
46 evidence or lack thereof. See Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

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1 Each recommended decision and each final decision shall contain sufficient factual and
2 legal information and reasoning to enable the parties to understand the basis for the
3 decision, and shall otherwise meet the requirements of law. See Rules 12D-9.030(1) and
4 12D-9.032(1)(a), F.A.C.

5
6 The Board shall issue all final decisions within 20 calendar days of the last day the
7 Board is in session pursuant to Section 194.032, F.S. See Rule 12D-9.032(4), F.A.C.

8 9 10 **Required Forms for Written Decisions**

11 For producing recommended decisions and final decisions, the Department prescribes
12 the Form DR-485 series, and any electronic equivalent forms approved by the
13 Department under Section 195.022, F.S. See Rule 12D-9.030(4), F.A.C.

- 14
15 * The Form DR-485 series is available on the Department's website at the following
16 link: <http://floridarevenue.com/property/Pages/VAB.aspx>
17
18 * Boards and special magistrates are required to use forms that are current and up-to-
19 date.
20
21 * The Form DR-485 series, or approved electronic equivalent forms, are the only
22 forms that shall be used for producing remand decisions, recommended decisions,
23 and final decisions. See Rules 12D-9.029(4), 12D-9.030(4), and 12D-9.032(5), F.A.C.
24
25 * The Form DR-485 series has separate sections for findings of fact and conclusions
26 of law. Additional sheets may be attached to the form if more space is needed to
27 properly complete the required sections listed on the form.

28
29 For producing written remand decisions, the Board or special magistrate must correctly
30 complete Form DR-485R, which also has a separate section for appropriate directions
31 to the property appraiser.

32
33 For producing recommended decisions on value petitions, an appraiser special
34 magistrate must correctly complete Form DR-485V.

35
36 For producing recommended decisions on exemption, classification, or portability
37 petitions, an attorney special magistrate must correctly complete Form DR-485XC.

38
39 For producing final decisions, the Board must use Form DR-485V for value petitions
40 and must use Form DR-485XC for exemption, classification, or portability petitions.

41 42 43 **Statements on Board Decisions by the Auditor General**

44 The Florida Auditor General reports to and works for the Florida Legislature. Generally,
45 the Auditor General is authorized to conduct performance audits of state and local
46 governments.

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1 Auditor General's [Report No. 2006-007](#), issued in July 2005, contained the results of the
2 Auditor General's performance audit of value adjustment boards.

3
4 This report contains criticisms of past written decisions of value adjustment boards.

5
6 This Auditor General's report contained the following two statements:
7

8 * *"Our review of the written decisions of the special masters and the Boards revealed
9 that 37 percent of the written decisions (52 of 139) from Boards in 11 counties...did
10 not contain sufficient details in the finding of facts section of the written decisions to
11 satisfy the applicable requirements of the above-cited statute and rule."*

12
13 * *"We recommend that the Boards review the content of written findings and
14 conclusions, whether heard by the Boards or special masters, and ensure that those
15 findings and conclusions are documented in accordance with Section 194.034(2),
16 Florida Statutes, and Department of Revenue Rule 12D-10.003(5)(a), Florida
17 Administrative Code."*

18
19 **Note:** Rule 12D-10.003(5)(a), cited by the Auditor General in 2005 as shown above,
20 was later re-numbered to Rule 12D-10.003(3) as part of a rule amendment effective
21 March 30, 2010. Users of these training materials are directed to current Rule 12D-
22 10.003(3), F.A.C.
23
24

Statements on Board Decisions by Florida Courts

25
26 Florida court decisions have also commented on the inadequacy of some past written
27 records.

28
29 The following four statements appear, along with other statements, in a Florida
30 appellate court decision that was critical of a Board's written decision. See Palm Beach
31 Gardens Community Hospital, Inc. v. Nikolits, 754 So.2d 729 (Fla. 4th DCA 1999).
32

33 * *"The requirement that the value adjustment board shall contain in its decision findings
34 of fact and conclusions of law and shall contain reasons for upholding or overturning
35 the determination of property appraiser is not discretionary but mandatory." Also, see
36 Subsection 194.034(2), F.S.*

37
38 * *"A review of the Record of Decision and Notice of the Value Adjustment Board reveals
39 the total absence of findings of facts and the total absence of reasons for upholding
40 the property appraiser."*

41
42 * *"Under the heading 'conclusions of law,' the value adjustment board merely states:
43 'Petitioner did not overcome burden of proof.'"*

44
45 * *"Simply saying, as the board did in this case, that the taxpayer failed to carry his
46 burden of proof is little more than saying, 'sorry, but you lose.'"*
47

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1 Another Florida appellate court determined that a Board's written decisions were
2 inadequate and did not meet the requirements of law. See Higgs v. Property Appraisal
3 Adjustment Board of Monroe County, 411 So.2d 307 (Fla. 3d DCA 1982).

4
5 This court stated the following regarding the Board's decisions.

6
7 * *"Eight of the decisions contain no reasons, findings or conclusions at all; twelve give*
8 *as a reason 'condition of building' or 'condition of house'; three expand upon this by*
9 *stating 'condition of building (or house) not computed properly'; two say 'land use*
10 *restricted'; and the remainder variously state 'income factors,' 'set back restrictions,'*
11 *'restricted use of land-Old Island District,' 'lot location and restricted use,' and 'due to*
12 *condition.'"*

13
14 * This court then referred to the *"woeful inadequacy of these statements."*

15
16 * This court also stated the following regarding the decisions of this Board.

17
18 * *"The Board does not seriously contend, and indeed cannot, that the written decisions*
19 *comport with the law's requirements."*

20
21 Thus, Florida courts have expressed the importance of timely, written Board decisions
22 that include appropriate findings of fact, conclusions of law, and reasons for upholding
23 or overturning the determination of the property appraiser.

24 25 26 **Sufficiency of Evidence**

27 When applied to evidence, the term "sufficient" is a test of adequacy. See Rule 12D-
28 9.027(6), F.A.C.

29
30 Sufficient evidence is admitted evidence that has enough overall weight, in terms of
31 relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6),
32 F.A.C.

33
34 A particular conclusion is justified when the overall weight of the admitted evidence
35 meets the standard of proof that applies to the issue under consideration. See Rule 12D-
36 9.027(6), F.A.C.

37
38 The Board or special magistrate must consider the admitted evidence and determine
39 whether it is sufficiently relevant and credible to reach the "preponderance of the
40 evidence" standard of proof. See Rules 12D-9.025(1)(d), 12D-9.027(5), and 12D-9.027(6),
41 F.A.C.

42 43 44 **Evaluation of the Relevance of Evidence**

45 For administrative reviews, "relevant evidence" is evidence that is reasonably related,
46 directly or indirectly, to the statutory criteria that apply to the issue under review. See
47 Rule 12D-9.025(2)(b), F.A.C.

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1
2 * This description means the evidence meets or exceeds a minimum level of
3 relevance necessary to be admitted for consideration, but does not necessarily
4 mean that the evidence has sufficient relevance to legally justify a particular
5 conclusion. See Rule 12D-9.025(2)(b), F.A.C.
6

7 In evaluating the relevance of evidence, the Board or special magistrate must consider,
8 as of the January 1 assessment date, how well the evidence relates to the petitioned
9 property or property owner, as applicable, and to the statutory criteria that apply.
10

11 Presented below is some information on relevant evidence from recognized sources.
12

13 *“Relevant evidence is evidence tending to prove or disprove a material fact.”* See Section
14 90.401, F.S.
15

16 *“In order for evidence to be relevant, it must have a logical tendency to prove or*
17 *disprove a fact which is of consequence to the outcome of the action. The definition of*
18 *relevant evidence in section 90.401 combines the traditional principles of ‘relevancy’*
19 *and ‘materiality.’ The concept of ‘relevancy’ has historically referred to whether the*
20 *evidence has any logical tendency to prove or disprove a fact.”* See Ehrhardt’s *Florida*
21 *Evidence, 2008 Edition, pages 126-127.*
22

23 *“Included within the section 90.401 definition of relevancy is the concept of materiality;*
24 *the evidence must ‘tend to prove or disprove a material fact.’ When evidence is offered*
25 *to prove a fact which is not a matter in issue, it is said to be immaterial.”* See Ehrhardt’s
26 *Florida Evidence, 2008 Edition, page 129.*
27

28 *“In order to determine whether evidence has probative value, the fact for which it is*
29 *offered to prove must be identified. Evidence may be probative of one fact and not of*
30 *another.”* See Ehrhardt’s *Florida Evidence, 2008 Edition, pages 128-129.*
31

32 *“Whether the evidence has probative value is an issue for the discretion of the court.”*
33 *See Ehrhardt’s Florida Evidence, 2008 Edition, page 129.*
34
35

Evaluation of the Credibility of Evidence

37 For administrative reviews, “credible evidence” is evidence that is worthy of belief
38 (believable). See *Black’s Law Dictionary, Eighth Edition, page 596.*
39

40 The definition above means the evidence meets or exceeds a minimum level of
41 credibility, but does not necessarily mean that the credible evidence has sufficient
42 weight to legally justify a particular decision.
43

44 Generally, the two types of evidence presented in a Board hearing are testimonial
45 evidence and documentary evidence.
46

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1 * Testimonial evidence (testimony) means statements lawfully made by persons at the
2 hearing.

3
4 * Documentary evidence means documentation lawfully presented by persons at the
5 hearing.

6
7 To evaluate the credibility of evidence, the Board or special magistrate may consider
8 factors such as the demeanor of the witnesses and the content, meaning, plausibility,
9 consistency, reasonableness, and validity of the evidence.

10
11 The following excerpt on determining the credibility of expert witnesses appears in the
12 [Florida Standard Civil Jury Instructions](#), approved for publication by the Florida
13 Supreme Court.

14
15 * *“You may accept such opinion testimony, reject it, or give it the weight you think it
16 deserves, considering the knowledge, skill, experience, training, or education of the
17 witness, the reasons given by the witness for the opinion expressed, and all the
18 other evidence in the case.”*

19
20 It is important that Boards and special magistrates consider the credibility of a unit of
21 evidence in light of all of the evidence.

22
23 A text on Florida evidence states the following on weighing testimonial evidence in a
24 civil case.

25
26 * *“What counts is not the volume of the evidence but the quality—not how many
27 witnesses testify but the persuasiveness of the testimony.”* See *Ehrhardt’s Florida
28 Evidence, 2008 Edition*, pages 98-99.

29
30 How can the Board or special magistrate evaluate the credibility of documentary
31 evidence (documents, photographs, etc.)?

32
33 Determining whether documentary evidence is authentic (genuine) is part of evaluating
34 the credibility of the evidence. Genuine means the evidence is what it is claimed to be.

35
36 Documentary evidence may be authenticated by evaluating its appearance, contents,
37 substance, internal patterns, or other distinctive characteristics, taken in conjunction
38 with the circumstances. See ITT Real Estate Equities, Inc. v. Chandler Insurance Agency,
39 Inc., 617 So.2d 750 (Fla. 4th DCA 1993).

40
41 Other considerations for evaluating documentary evidence may include: the relative
42 roles of the item’s creator and intended user; the effective date and intended use of the
43 item; and whether the item is signed.

44
45

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1 **Requirements for Findings of Fact**

2 Florida law requires that remand decisions, recommended decisions, and final decisions
3 include findings of fact.

4
5 *“Every decision of the board must contain specific and detailed findings of fact...”* See
6 Rule 12D-10.003(3), F.A.C.

7
8 Findings of fact must be produced and kept in writing.

9
10 As used in this training, the term “findings of fact” includes proposed findings of fact
11 produced by special magistrates in their recommended decisions.

12
13 Findings of fact are written statements on factual conclusions based only upon the
14 evidence or lack thereof.

15
16 For each of the statutory criteria for the issue under administrative review, the findings
17 of fact must identify the corresponding admitted evidence or lack thereof. See Rules
18 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

19
20 The Board legal counsel is responsible for providing the advice and assistance
21 necessary to assure that findings of fact are produced in accordance with law.

22
23 Findings of fact must be sufficiently detailed for third parties to understand the findings,
24 and to understand the evidence, or lack thereof, and reasoning on which the findings of
25 fact must be based.

26
27 Each finding of fact must be properly annotated to its supporting evidence or lack
28 thereof. See Rule 12D-10.003(3), F.A.C., referring to “basic and underlying finding.” Also, see
29 Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

30
31 Findings of fact are those findings on which the conclusions of law rest and which are
32 supported by evidence or lack thereof. Findings of fact are more detailed than the
33 conclusions of law but less detailed than a summary of the evidence. See Rule 12D-
34 10.003(3)(b), F.A.C., referring to “basic and underlying findings” and “ultimate findings.”

35
36 In arriving at the findings of fact, the Board or special magistrate must determine and
37 consider the relevance and credibility of the evidence or lack thereof.

38 39 **Tips for Producing Written Findings of Fact**

40 The written findings of fact should:

- 41
- 42 1. Be based upon the relevance and credibility of the evidence or lack thereof;
 - 43
 - 44 2. Be reasonably related to statutory attributes of the subject property or, when
45 applicable, to statutory attributes of the subject property owner;
 - 46

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- 1 3. Be expressed in terms of the statutory criteria that apply to the issue under
2 administrative review;
- 3
- 4 4. Specifically identify the record evidence, or lack of record evidence, that relates to
5 each of the statutory criteria that apply to the issue under administrative review, and
6 specifically state how and why such evidence, or lack of evidence, relates to each of
7 these criteria;
- 8
- 9 5. Be stated clearly, and answer the questions of “who, what, when, where, how, and
10 why” regarding the evidence;
- 11
- 12 6. Provide clear support for the conclusions of law that are required in each of the steps
13 set forth in Rule 12D-9.027, F.A.C., which apply to the issue under administrative
14 review;
- 15
- 16 7. Provide reasons for upholding or overturning the property appraiser’s determination;
17 and
- 18
- 19 8. Otherwise meet all requirements of law.
- 20
- 21

Requirements for Conclusions of Law

22 Florida law requires that remand decisions, recommended decisions, and final decisions
23 include conclusions of law.

24
25
26 Conclusions of law must be produced and kept in writing.

27
28 As used in this training, the term “conclusions of law” includes proposed conclusions of
29 law produced by special magistrates in their recommended decisions.

30
31 A conclusion of law is a written statement specifying which part(s) of law apply to a
32 finding of fact and stating how the law applies to the finding of fact.

33
34 Conclusions of law must be based on findings of fact. See Rules 12D-9.030(1) and 12D-
35 9.032(1)(a), F.A.C.

36
37 The Board attorney is responsible for providing the advice and assistance necessary to
38 assure that conclusions of law are developed in accordance with law.

39
40 Conclusions of law must be sufficiently detailed for third parties to understand the
41 conclusions of law, and to understand the evidence and facts on which the conclusions
42 must be based.

43
44 A conclusion of law is usually expressed in the language of a statutory standard and
45 must be supported by and flow rationally from the findings of fact. See Rule 12D-
46 10.003(3)(a), F.A.C., referring to “ultimate finding” and “basic and underlying findings.”

47

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Tips for Producing Written Conclusions of Law

The written conclusions of law should:

1. Be based only upon the evidence, the findings of fact, and the provisions of law that apply to the issue under administrative review;
2. Be stated in terms of the provisions of law that apply to the substantive content of the administrative review (see Rule 12D-9.027, F.A.C.) and specifically state how and why the record evidence satisfies or fails to satisfy the applicable statutory criteria;
3. When stating a standard of proof, state only the standard of “preponderance of the evidence;” [See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521)];
4. Specifically and separately address each of the steps set forth in Rule 12D-9.027, F.A.C., which apply to the issue under administrative review;
5. Provide reasons for upholding or overturning the property appraiser’s determination; and
6. Otherwise meet all requirements of law.

Specific Requirements for Findings of Fact and Conclusions of Law

Florida law contains specific requirements for findings of fact and conclusions of law under certain conditions.

In each recommended decision and in each final decision, the conclusions of law must be based on findings of fact. For each of the statutory criteria for the issue under administrative review, the findings of fact must identify the corresponding admitted evidence or lack thereof. See Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

Rule 12D-9.021(8), F.A.C., provides that decisions issued under Rules 12D-9.021(6) or (7), F.A.C., shall not be treated as withdrawn or settled petitions and shall contain:

1. A finding of fact that the petitioner did not appear at the hearing and did not state good cause; and
2. A conclusion of law that the relief is denied and the decision is being issued in order that any right the petitioner may have to bring an action in circuit court is not impaired.

When producing a written remand decision under Rule 12D-9.029(6), F.A.C., the Board or special magistrate shall produce written findings of fact and conclusions of law necessary to determine that a remand is required. See Rule 12D-9.029(4), F.A.C.

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1 Rule 12D-9.029(9)(b), F.A.C., provides that when a petitioner does not notify the Board
2 clerk that the results of the property appraiser's written remand review are unacceptable
3 to the petitioner and does not request a continuation hearing, or if the petitioner waives
4 a continuation hearing, the Board or special magistrate shall issue a decision or
5 recommended decision that shall contain:

- 6
- 7 1. A finding of fact that the petitioner did not request a continuation hearing or waived
8 such hearing; and
 - 9
 - 10 2. A conclusion of law that the decision is being issued in order that any right the
11 petitioner may have to bring an action in circuit court is not impaired.
 - 12

13 Legal advice from the Board attorney relating to the facts of a petition or to the specific
14 outcome of a decision, if in writing, shall be included in the record and referenced within
15 the findings of fact and conclusions of law. See Rule 12D-9.030(6), F.A.C.

16

17 * If not in writing, legal advice from the Board attorney shall be documented within the
18 findings of fact and conclusions of law. See Rule 12D-9.030(6), F.A.C.

19

20

Reasons for Recommended Decisions and Final Decisions

21 All recommended decisions and all final decisions must contain written reasons for
22 upholding or overturning the property appraiser's determination. See Rules 12D-9.030(1)
23 and 12D-9.032(1)(a), F.A.C.

24

25

26 Reasons are those clearly stated grounds upon which the Board acted. See Rule 12D-
27 10.003(3)(c), F.A.C.

28

29 Reasons for upholding or overturning a particular determination of the property
30 appraiser must be based only upon the evidence, the findings of fact, and the
31 conclusions of law for that petition.

32

33 Reasons should be sufficiently detailed for the parties to understand the reasons, and to
34 understand the evidence, facts, and law on which the reasons must be based.

35

36 Reasons should be expressed in findings of fact and conclusions of law.