

# **20210 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
- ~~2016 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

## 2021~~0~~ Value Adjustment Board Training - Module 1

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

### 27 **Definitions and Abbreviations Used in This Training**

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

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.

46

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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.

### **(NEW) 2020 Changes to Statutory Law**

41  
42  
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

## 2021~~0~~ Value Adjustment Board Training - Module 1

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

## 2021~~0~~ Value Adjustment Board Training - Module 1

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



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

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

### 17 **2019 Changes to Statutory Law**

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

23  
24 Legislation enacted in 2019:

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

### **2016 Changes to Statutory Law**

41  
42  
43 ~~In 2016, several changes to statutory law were enacted. These changes affected~~  
44 ~~administrative reviews of assessments beginning in 2016. These changes are~~  
45 ~~summarized below and are addressed where necessary in various modules of this~~  
46

## 20210 Value Adjustment Board Training - Module 1

1 training. Please refer to the chapter law and statutes to read the legislative changes in  
2 context with the surrounding statutory language. The chapter laws are available at:  
3 <http://laws.flrules.org/>  
4

5 Legislation enacted in 2016:  
6

- 7 ~~• Amended section 192.0105(2)(f), F.S., to provide that a taxpayer has the right, in  
8 value adjustment board proceedings, to be represented by a person specified in  
9 sections 194.034(1)(a), (b), or (c), F.S. See Chapter 2016-128, Section 1, Laws of Florida  
10 (CS/CS/HB 499).~~
- 11
- 12 ~~• Amended section 193.073(1)(a), F.S., to provide that the property appraiser shall  
13 mail a notice informing the taxpayer that an erroneous or incomplete statement of  
14 personal property has been filed. Such notice shall be mailed at any time before the  
15 mailing of the notice required in s. 200.069. The taxpayer has 30 days after the date  
16 the notice is mailed to provide the property appraiser with a complete return listing  
17 all property for taxation. See Chapter 2016-128, Section 2, Laws of Florida (CS/CS/HB  
18 499).~~
- 19
- 20 ~~• Amended section 193.122, F.S., to provide that apart from an extension of the roll  
21 under s. 197.323, F.S., the value adjustment board must complete all hearings that  
22 s. 194.032, F.S., requires and certify the assessment roll to the property appraiser  
23 by June 1 following the assessment year. The June 1 requirement can extend until  
24 December 1 in each year in which the number of filed petitions increases by more  
25 than 10 percent over the previous year. The provisions of this law first apply to the  
26 2018 tax roll. See Chapter 2016-128, Sections 3 and 4, Laws of Florida (CS/CS/HB 499).~~
- 27
- 28 ~~• Amended sections 193.155(10), 193.1554(10), and 193.1555(10), F.S., to provide  
29 that before the property appraiser may file a tax lien on property not entitled to  
30 receive the property assessment limitations in these sections, the owner must have  
31 30 days to pay the taxes and any applicable penalties and interest. If the property  
32 appraiser improperly grants the property assessment limitation because of a clerical  
33 mistake or the property appraiser's omission, the person or entity improperly  
34 receiving the property assessment limitation may not be assessed penalties or  
35 interest. See Chapter 2016-128, Sections 5, 6, and 7, Laws of Florida (CS/CS/HB 499).~~
- 36
- 37 ~~• Amended section 194.011, F.S., to provide that the taxpayer must sign a petition to  
38 the value adjustment board or the taxpayer's written authorization or power of  
39 attorney must accompany the petition at the time of filing unless the person filing the  
40 petition is listed in s. 194.034(1)(a), F.S. A person listed in s. 194.034(1)(a), F.S.,  
41 may file a petition with a value adjustment board without the taxpayer's signature or  
42 written authorization by certifying under penalty of perjury that he or she has  
43 authorization to file the petition on the taxpayer's behalf. If a taxpayer notifies the  
44 value adjustment board that someone has filed a petition for the taxpayer's property  
45 without his or her consent, the value adjustment board may require the person filing  
46 the petition to provide written authorization from the taxpayer authorizing the person~~

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1 to proceed with the appeal before a hearing is held. If the value adjustment board  
2 finds that a person listed in s. 194.034(1)(a), F.S., willfully and knowingly filed a  
3 petition that the taxpayer did not authorize, the value adjustment board must require  
4 the person to provide the taxpayer's written authorization for representation to the  
5 value adjustment board clerk before any petition filed by that person is heard. The  
6 taxpayer's written authorization for representation is valid for one assessment year,  
7 and a new power of attorney or written authorization by the taxpayer is required for  
8 each subsequent assessment year. This section does not authorize the individual,  
9 agent, or legal entity to receive or access the taxpayer's confidential information  
10 without written authorization from the taxpayer. See Chapter 2016-128, Section 8, Laws  
11 of Florida (CS/CS/HB 499).

- 12
- 13 ~~Amended section 194.014, F.S., to change the interest rate for disputed property tax~~  
14 ~~assessments from 12 percent per year to an annual percentage rate equal to the~~  
15 ~~bank prime loan rate as the Board of Governors of the Federal Reserve System~~  
16 ~~determines on July 1 of the tax year or the next business day if July 1 is a Saturday,~~  
17 ~~Sunday, or legal holiday. Also, each taxing authority will proportionately fund interest~~  
18 ~~on an overpayment related to a petition. See Chapter 2016-128, Section 9, Laws of~~  
19 ~~Florida (CS/CS/HB 499).~~

- 20
- 21 ~~Amended section 194.032, F.S., to add that the value adjustment board will meet to~~  
22 ~~hear appeals from determinations that a change of ownership, ownership or control,~~  
23 ~~or a qualifying improvement has occurred. See Chapter 2016-128, Section 10, Laws of~~  
24 ~~Florida (CS/CS/HB 499).~~

- 25
- 26 ~~Amended section 194.032, F.S., to delete the requirement that the petitioner must~~  
27 ~~check the appropriate box on the petition form to request a copy of the property~~  
28 ~~record card containing relevant information that the property appraiser used in~~  
29 ~~computing the current assessment. See Chapter 2016-128, Section 10, Laws of Florida~~  
30 ~~(CS/CS/HB 499).~~

- 31
- 32 ~~Amended section 194.032, F.S., to provide that the property appraiser must provide~~  
33 ~~a copy of the property record card containing information relevant to the computation~~  
34 ~~of the current assessment, with confidential information redacted. If the property~~  
35 ~~record card is available from the property appraiser online, the property appraiser~~  
36 ~~must notify the petitioner of its availability. See Chapter 2016-128, Section 10, Laws of~~  
37 ~~Florida (CS/CS/HB 499).~~

- 38
- 39 ~~Amended section 194.032, F.S., to provide that the petitioner or the property~~  
40 ~~appraiser may reschedule the hearing a single time for good cause. In this section,~~  
41 ~~“good cause” means circumstances beyond the control of the person seeking to~~  
42 ~~reschedule the hearing which reasonably prevent him or her from having adequate~~  
43 ~~representation at the hearing. If the hearing is rescheduled, the clerk must notify the~~  
44 ~~petitioner of his or her rescheduled time at least 15 calendar days before the~~  
45 ~~rescheduled appearance, unless waived. See Chapter 2016-128, Section 10, Laws of~~  
46 ~~Florida (CS/CS/HB 499).~~

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- 1  
2 ~~• Amended section 194.034, F.S., to provide that the taxpayer's employee or an~~  
3 ~~employee of an affiliated entity, an attorney who is a member of The Florida Bar, a~~  
4 ~~real estate appraiser licensed under Ch. 475, F.S., a real estate broker licensed~~  
5 ~~under Ch. 475, F.S., or a certified public accountant licensed under Ch. 473, F.S.,~~  
6 ~~whom the taxpayer retains may represent the petitioner. This person may present~~  
7 ~~testimony and other evidence.~~

8  
9 ~~Further amended section 194.034, F.S., to provide that a person with a power of~~  
10 ~~attorney to act on the taxpayer's behalf may also represent the petitioner. This~~  
11 ~~person may present testimony and other evidence. The power of attorney must~~  
12 ~~conform to the requirements of part II of Ch. 709, F.S., is valid only to represent a~~  
13 ~~single petitioner in a single assessment year, and must identify the parcels for which~~  
14 ~~the taxpayer has granted the person the authority to represent the taxpayer. The~~  
15 ~~Department of Revenue must adopt a form that meets the requirements of this~~  
16 ~~paragraph. However, a petitioner is not required to use the department's form to~~  
17 ~~grant the power of attorney.~~

18  
19 ~~Further amended section 194.034, F.S., to provide that a person who has written~~  
20 ~~authorization to act on the taxpayer's behalf and receives no compensation may also~~  
21 ~~represent a petitioner. This person may present testimony and other evidence. The~~  
22 ~~written authorization is valid only to represent a single petitioner in a single~~  
23 ~~assessment year and must identify the parcels for which the taxpayer authorizes the~~  
24 ~~person to represent the taxpayer. The Department of Revenue must adopt a form~~  
25 ~~that meets the requirements of this paragraph. However, a petitioner is not required~~  
26 ~~to use the department's form to grant the authorization.~~

27  
28 ~~Further amended section 194.034, F.S., to provide that an assessment may not be~~  
29 ~~contested unless a return as required by section 193.052, F.S., was timely filed. This~~  
30 ~~law defines "timely filed" as filed by the deadline established in section 193.062,~~  
31 ~~F.S., or before the expiration of any extension under section 193.063, F.S. If the~~  
32 ~~property appraiser mails the notice under section 193.073(1)(a), F.S., the taxpayer~~  
33 ~~must submit a complete return under section 193.073(1)(a), F.S., to contest the~~  
34 ~~assessment.~~

35  
36 ~~Amended section 194.034(2), F.S., to provide that findings of fact must be based on~~  
37 ~~admitted evidence or a lack thereof.~~

38  
39 ~~See Chapter 2016-128, Section 11, Laws of Florida (CS/CS/HB 499).~~

- 40  
41 ~~• Amended section 194.035, F.S., to allow an attorney special magistrate to hear~~  
42 ~~issues of the determination that a change of ownership, change of ownership or~~  
43 ~~control, or a qualifying improvement has occurred. Also, when appointing special~~  
44 ~~magistrates or scheduling special magistrates for specific hearings, the board, board~~  
45 ~~attorney, and board clerk may not consider the dollar amount or percentage of any~~  
46 ~~assessment reductions any special magistrate has recommended in the current year~~



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1 or in any previous year. See Chapter 2016-128, Section 12, Laws of Florida (CS/CS/HB  
2 499).

- 3
- 4 • Amended section 197.3632(4)(a), F.S., to provide that a local government shall  
5 adopt a non-ad valorem assessment roll at a public hearing held between January 1  
6 and September 15, or between January 1 and September 25 for any county as  
7 defined in s. 125.011(1). See Chapter 2016-128, Section 13, Laws of Florida (CS/CS/HB  
8 499).

- 9
- 10 • Amended section 197.3632(5)(a), F.S., to provide that, contingent upon conditions  
11 set forth in the statute, by September 15 of each year, or by September 25 for any  
12 county as defined in s. 125.011(1), the chair of the local governing board or his or  
13 her designee shall certify a non-ad valorem assessment roll. See Chapter 2016-128,  
14 Section 13, Laws of Florida (CS/CS/HB 499).

- 15
- 16 • Repeals sections (4) and (5) of Rule 12D-9.019, Florida Administrative Code,  
17 relating to scheduling and notice of a hearing before the value adjustment board.  
18 The Department of State must update the Florida Administrative Code to remove  
19 those subsections of the rule. See Chapter 2016-128, Section 15, Laws of Florida  
20 (CS/CS/HB 499).

- 21
- 22 • Amended section 193.461(7)(a), F.S., to provide that lands classified for assessment  
23 purposes as agricultural lands that a state or federal eradication or quarantine  
24 program takes out of production will remain agricultural lands for the remainder of  
25 the program. Lands that these programs convert to nonincome-producing uses will  
26 continue to be assessed at a minimum value of up to \$50 per acre on a single-year  
27 assessment methodology.

28

29 Identifies the Citrus Health Response Program as a state or federal eradication or  
30 quarantine program. The bill allows land to retain its agricultural classification for five  
31 years after the date of execution of a compliance agreement between the landowner  
32 and the Department of Agriculture and Consumer Services (DACS) or a federal  
33 agency, as applicable, for this program or successor programs.

34

35 Lands under these programs that are converted to fallow or otherwise nonincome-  
36 producing uses are still agricultural lands assessed at a minimal value of up to \$50  
37 per acre on a single-year assessment methodology while fallow or used for  
38 nonincome-producing purposes. Lands under these programs that are replanted in  
39 citrus according to the requirements of the compliance agreement are classified as  
40 agricultural lands and are assessed at a minimal value of up to \$50 per acre, on a  
41 single-year assessment methodology, during the five-year term of agreement.

42

43 See Chapter 2016-88, Sections 1 and 5, Laws of Florida (CS/CS/HB 749).

- 44
- 45 • Amended sections 196.012 and 196.1995, F.S., to provide:
- 46

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~~Added language to describe the new businesses and expansions of existing businesses that are eligible to receive the economic development property tax exemption. It states that the new businesses and expansions of existing businesses that are in areas that were designated as enterprise zones under Ch. 290, F.S., as of December 30, 2015, but not in a brownfield area, may qualify for the property tax exemption only if the local governing body approves by motion or resolution, subject to ordinance adoption, or by ordinance enacted before December 31, 2015.~~

~~All data center equipment for a data center will be exempt from property taxation for the term of the approved exemption.~~

~~Any exemption granted under this section will remain in effect for up to 10 years with respect to any particular facility, or up to 20 years for a data center, regardless of any change in the authority of the county or municipality to grant these exemptions or the expiration of the Enterprise Zone Act under Ch. 290, F.S.~~

~~This law's amendments to ss. 196.012 and 196.1995, F.S., which relate to the property tax exemption for certain enterprise zone businesses, are remedial in nature and apply retroactively to December 31, 2015.~~

~~See Chapter 2016-220, Sections 2, 3, and 4, Laws of Florida (HB 7099).~~

### **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](http://laws.flrules.org/files/Ch_2009-121.pdf)

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

Board attorneys are responsible for ensuring that this important legislation is implemented for all administrative reviews of assessments, starting in 2009.

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

Below are some key points from this law, but users of this training are advised to obtain a copy of the law and review it carefully to understand all of its provisions.

1. The property appraiser's assessment is presumed correct if the appraiser proves by a preponderance of the evidence that the assessment was arrived at by complying with Section 193.011, F.S., any other applicable statutory requirements relating to

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- 1 classified use values or assessment caps, and professionally accepted appraisal  
2 practices, including mass appraisal standards, if appropriate.  
3
- 4 2. A taxpayer who challenges an assessment is entitled to a determination by the  
5 Board of the appropriateness of the appraisal methodology used in making the  
6 assessment.  
7
- 8 3. The just value of property must be determined by an appraisal methodology that  
9 complies with the criteria of section 193.011, F.S., and professionally accepted  
10 appraisal practices, including mass appraisal standards, if appropriate.  
11
- 12 4. The provisions of this statute preempt any prior case law that is inconsistent with it.  
13
- 14 5. Under this law, “preponderance of the evidence” is the only standard of proof that  
15 applies in the administrative review of assessments. Board attorneys must ensure  
16 that Boards or special magistrates do not use any other standard of proof.  
17
  - 18 \* “Preponderance of the evidence” is a standard (level) of proof that means  
19 “greater weight of the evidence.”  
20
  - 21 \* This standard of proof applies to petitions on valuations, property classifications,  
22 exemptions, assessment difference transfers, and tax deferrals and associated  
23 penalties.  
24
  - 25 \* This is a significant change from prior law that provided for a different standard of  
26 proof.  
27

28 For administrative reviews of valuations, this statute also provides criteria for a Board or  
29 special magistrate to apply in:

- 30
- 31 1. Determining whether the property appraiser established a presumption of  
32 correctness;  
33
- 34 2. Determining whether the property appraiser’s determination is incorrect, when  
35 applicable;  
36
- 37 3. When appropriate, determining whether to revise the assessment or to remand the  
38 assessment to the property appraiser; and  
39
- 40 4. Revising the assessment when required.  
41

42 Before 2009 and the adoption of House Bill 521, section 194.301, F.S., provided that  
43 the Board may establish the assessment when authorized.  
44

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1 \* However, this statute and related rules (see below) provide that the Board shall  
2 establish a revised assessment when authorized. This is a significant change from  
3 prior law.

4  
5 This statute also requires the property appraiser to follow appropriate remand directions  
6 from the Board. This requirement is a significant change from prior law.

7  
8 Provisions of this law are addressed in other modules of this training where appropriate.  
9

### 10 11 **Administrative Rules and Forms**

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

- 13  
14 1. Rule Chapter 12D-9 and accompanying forms;  
15 2. Rule Chapter 12D-10; and  
16 3. Rule Chapter 12D-16.002, F.A.C., which includes forms to be used by the Board.  
17

18 These rules and forms are contained in the Department's Uniform Policies and  
19 Procedures Manual for value adjustment boards, and are available on the Department's  
20 website at the following link: <http://floridarevenue.com/property/Pages/VAB.aspx>  
21

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

24  
25 These rules supersede any local rules or prior Department rules on the subject.  
26

27 Rule Chapter 12D-9, F.A.C., is the primary component of the Department's Uniform  
28 Policies and Procedures Manual for value adjustment boards, and also is a primary  
29 component of this training for value adjustment boards and special magistrates.  
30  
31

### 32 **Uniform Policies and Procedures Manual and Accompanying** 33 **Documents**

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

35  
36 *"The department shall develop a uniform policies and procedures manual that shall be*  
37 *used by value adjustment boards, special magistrates, and taxpayers in proceedings*  
38 *before value adjustment boards. The manual shall be made available, at a minimum, on*  
39 *the department's website and on the existing websites of the clerks of circuit courts."*  
40

41 The Florida Department of Revenue has developed the Uniform Policies and  
42 Procedures Manual and has made it available, along with accompanying documents, on  
43 its website as stated below.  
44

45 Along with the accompanying documents listed below, the Uniform Policies and  
46 Procedures Manual must be made available on the existing website of the Board clerk

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1 in each of the 67 counties.

2

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

5

6 The Uniform Policies and Procedures Manual and Accompanying Documents:

7 The three sets of documents described below are available on the Department's  
8 website at <http://floridarevenue.com/property/Pages/VAB.aspx>

9

10 1. The "Uniform Policies and Procedures Manual" for value adjustment boards, which is  
11 composed of the following items:

12

13 a) Taxpayer rights as provided in Florida Statutes and the recently adopted rules;

14

15 b) The recently adopted rules of procedure for value adjustment board proceedings;

16

17 c) Recently adopted forms for value adjustment boards;

18

19 d) Florida Statutes regarding value adjustment board procedures; and

20

21 e) A notice regarding the use of case law.

22

23 Accompanying the Uniform Policies and Procedures Manual are two sets of documents  
24 titled:

25

26 2. "Other Legal Resources Including Statutory Criteria," and

27

28 3. "Reference Materials Including Guidelines."

29

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

32

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

35

36

### 37 **The Value Adjustment Board and Government-in-the-Sunshine**

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

41

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

46

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

3  
4 At one of its organizational meetings held prior to conducting hearings, the Board shall  
5 make available to the public, special magistrates, and Board members the requirements  
6 of Florida's Government in the Sunshine / open government laws including information  
7 on where to obtain the current Government-in-the-Sunshine manual. See Rule 12D-  
8 9.013(1)(g), F.A.C.

9  
10 Florida's Government-in-the-Sunshine Manual is available at the following internet link:  
11 <http://www.myfloridalegal.com/sun.nsf/sunmanual>

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

16  
17 \* These meetings or orientations must be reasonably noticed to the public in the same  
18 manner as an organizational meeting of the Board, or posted as reasonable notice on  
19 the Board clerk's website. See Rule 12D-9.012(6), F.A.C.

20  
21 All petition hearings shall be open to the public, including hearings conducted by  
22 electronic media. See Rule 12D-9.024(2) and 12D-9.026(4), F.A.C.

23  
24 The Department's training for special magistrates shall be open to the public. See Rule  
25 12D-9.012(2), F.A.C.

### 26 27 28 **Complete Text of Specific Legal Provisions for Taxpayer Rights**

29 Florida law provides specific rights for property taxpayers.

30  
31 These rights are in section 192.0105, F.S., and in Rule 12D-9.001, F.A.C.

32  
33 These provisions of law are presented in their entirety in following sections of Module 1.

34  
35 Boards, Board legal counsel, Board clerks, special magistrates, and property appraisers  
36 must understand these taxpayer rights and take the steps necessary to ensure that  
37 these rights are afforded all property taxpayers.

### 38 39 40 **Taxpayer Rights in Section 192.0105, F.S.**

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

43  
44 *"There is created a Florida Taxpayer's Bill of Rights for property taxes and assessments*  
45 *to guarantee that the rights, privacy, and property of the taxpayers of this state are*  
46 *adequately safeguarded and protected during tax levy, assessment, collection, and*

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1 enforcement processes administered under the revenue laws of this state. The  
2 Taxpayer's Bill of Rights compiles, in one document, brief but comprehensive  
3 statements that summarize the rights and obligations of the property appraisers, tax  
4 collectors, clerks of the court, local governing boards, the Department of Revenue, and  
5 taxpayers. Additional rights afforded to payors of taxes and assessments imposed  
6 under the revenue laws of this state are provided in s. 213.015. The rights afforded  
7 taxpayers to assure that their privacy and property are safeguarded and protected  
8 during tax levy, assessment, and collection are available only insofar as they are  
9 implemented in other parts of the Florida Statutes or rules of the Department of  
10 Revenue. The rights so guaranteed to state taxpayers in the Florida Statutes and the  
11 departmental rules include:

12

13 (1) THE RIGHT TO KNOW.—

14

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

19

20 (b) The right to notification of a public hearing on each taxing authority's tentative  
21 budget and proposed millage rate and advertisement of a public hearing to finalize the  
22 budget and adopt a millage rate (see s. 200.065(2)(c) and (d)).

23

24 (c) The right to advertised notice of the amount by which the tentatively adopted  
25 millage rate results in taxes that exceed the previous year's taxes (see s. 200.065(2)(d)  
26 and (3)). The right to notification of a comparison of the amount of the taxes to be levied  
27 from the proposed millage rate under the tentative budget change, compared to the  
28 previous year's taxes, and also compared to the taxes that would be levied if no budget  
29 change is made (see ss. 200.065(2)(b) and 200.069(2), (3), (4), and (8)).

30

31 (d) The right that the adopted millage rate will not exceed the tentatively adopted  
32 millage rate. If the tentative rate exceeds the proposed rate, each taxpayer shall be  
33 mailed notice comparing his or her taxes under the tentatively adopted millage rate to  
34 the taxes under the previously proposed rate, before a hearing to finalize the budget  
35 and adopt millage (see s. 200.065(2)(d)).

36

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

42

43 (f) The right of an exemption recipient to be sent a renewal application for that  
44 exemption, the right to a receipt for homestead exemption claim when filed, and the  
45 right to notice of denial of the exemption (see ss. 196.011(6), 196.131(1), 196.151, and  
46 196.193(1)(c) and (5)).

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

6  
7 (h) *The right to be informed during the tax collection process, including: notice of tax*  
8 *due; notice of back taxes; notice of late taxes and assessments and consequences of*  
9 *nonpayment; opportunity to pay estimated taxes and non-ad valorem assessments*  
10 *when the tax roll will not be certified in time; notice when interest begins to accrue on*  
11 *delinquent provisional taxes; notice of the right to prepay estimated taxes by installment;*  
12 *a statement of the taxpayer's estimated tax liability for use in making installment*  
13 *payments; and notice of right to defer taxes and non-ad valorem assessments on*  
14 *homestead property (see ss. 197.322(3), 197.3635, 197.343, 197.363(2)(c), 197.222(3)*  
15 *and (5), 197.2301(3), 197.3632(8)(a), 193.1145(10)(a), and 197.254(1)).*

16  
17 (i) *The right to an advertisement in a newspaper listing names of taxpayers who are*  
18 *delinquent in paying tangible personal property taxes, with amounts due, and giving*  
19 *notice that interest is accruing at 18 percent and that, unless taxes are paid, warrants*  
20 *will be issued, prior to petition made with the circuit court for an order to seize and sell*  
21 *property (see s. 197.402(2)).*

22  
23 (j) *The right to be sent a notice when a petition has been filed with the court for an*  
24 *order to seize and sell property and the right to be mailed notice, and to be served*  
25 *notice by the sheriff, before the date of sale, that application for tax deed has been*  
26 *made and property will be sold unless back taxes are paid (see ss. 197.413(5),*  
27 *197.502(4)(a), and 197.522(1)(a) and (2)).*

28  
29 (k) *The right to have certain taxes and special assessments levied by special districts*  
30 *individually stated on the "Notice of Proposed Property Taxes and Proposed or Adopted*  
31 *Non-Ad Valorem Assessments" (see s. 200.069).*

32  
33 *Notwithstanding the right to information contained in this subsection, under s. 197.122*  
34 *property owners are held to know that property taxes are due and payable annually and*  
35 *are charged with a duty to ascertain the amount of current and delinquent taxes and*  
36 *obtain the necessary information from the applicable governmental officials.*

37  
38 (2) **THE RIGHT TO DUE PROCESS.—**

39  
40 (a) *The right to an informal conference with the property appraiser to present facts the*  
41 *taxpayer considers to support changing the assessment and to have the property*  
42 *appraiser present facts supportive of the assessment upon proper request of any*  
43 *taxpayer who objects to the assessment placed on his or her property (see s.*  
44 *194.011(2)).*

45



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

8  
9 (c) *The right to file a petition for exemption or agricultural classification with the value*  
10 *adjustment board when an application deadline is missed, upon demonstration of*  
11 *particular extenuating circumstances for filing late (see ss. 193.461(3)(a) and*  
12 *196.011(1), (7), (8), and (9)(e)).*

13  
14 (d) *The right to prior notice of the value adjustment board's hearing date, the right to*  
15 *the hearing at the scheduled time, the right to the hearing at the scheduled time, and*  
16 *the right to have the hearing rescheduled if the hearing is not commenced within a*  
17 *reasonable time, not to exceed 2 hours, after the scheduled time (see s. 194.032(2)).*

18  
19 (e) *The right to notice of date of certification of tax rolls and receipt of property record*  
20 *card if requested (see ss. 193.122(2) and (3) and 194.032(2)).*

21  
22 (f) *The right, in value adjustment board proceedings, to have all evidence presented*  
23 *and considered at a public hearing at the scheduled time, to be represented by a person*  
24 *specified in s. 194.034(1)(a), (b), or (c), to have witnesses sworn and cross-examined,*  
25 *and to examine property appraisers or evaluators employed by the board who present*  
26 *testimony (see ss. 194.034(1)(d) and (4), and 194.035(2)).*

27  
28 (g) *The right to be sent a timely written decision by the value adjustment board*  
29 *containing findings of fact and conclusions of law and reasons for upholding or*  
30 *overturning the determination of the property appraiser, and the right to advertised*  
31 *notice of all board actions, including appropriate narrative and column descriptions, in*  
32 *brief and nontechnical language (see ss. 194.034(2) and 194.037(3)).*

33  
34 (h) *The right at a public hearing on non-ad valorem assessments or municipal special*  
35 *assessments to provide written objections and to provide testimony to the local*  
36 *governing board (see ss. 197.3632(4)(c) and 170.08).*

37  
38 (i) *The right to bring action in circuit court to contest a tax assessment or appeal value*  
39 *adjustment board decisions to disapprove exemption or deny tax deferral (see ss.*  
40 *194.036(1)(c) and (2), 194.171, 196.151, and 197.2425.*

### 41 42 (3) **THE RIGHT TO REDRESS.—**

43  
44 (a) *The right to discounts for early payment on all taxes and non-ad valorem*  
45 *assessments collected by the tax collector, except for partial payments as defined in s.*  
46 *197.374, the right to pay installment payments with discounts, and the right to pay*

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1 delinquent personal property taxes under a payment program when implemented by the  
2 county tax collector (see ss. 197.162, 197.3632(8) and (10)(b)3., 197.222(1), and  
3 197.4155).

4  
5 (b) The right, upon filing a challenge in circuit court and paying taxes admitted in good  
6 faith to be owing, to be issued a receipt and have suspended all procedures for the  
7 collection of taxes until the final disposition of the action (see s. 194.171(3)).

8  
9 (c) The right to have penalties reduced or waived upon a showing of good cause when  
10 a return is not intentionally filed late, and the right to pay interest at a reduced rate if the  
11 court finds that the amount of tax owed by the taxpayer is greater than the amount the  
12 taxpayer has in good faith admitted and paid (see ss. 193.072(4) and 194.192(2)).

13  
14 (d) The right to a refund when overpayment of taxes has been made under specified  
15 circumstances (see ss. 193.1145(8)(e) and 197.182(1)).

16  
17 (e) The right to an extension to file a tangible personal property tax return upon  
18 making proper and timely request (see s. 193.063).

19  
20 (f) The right to redeem real property and redeem tax certificates at any time before full  
21 payment for a tax deed is made to the clerk of the court, including documentary stamps  
22 and recording fees, and the right to have tax certificates canceled if sold where taxes  
23 had been paid or if other error makes it void or correctable. Property owners have the  
24 right to be free from contact by a certificateholder for 2 years after April 1 of the year the  
25 tax certificate is issued (see ss. 197.432(13) and (14), 197.442(1), 197.443, and  
26 197.472(1) and (6)).

27  
28 (g) The right of the taxpayer, property appraiser, tax collector, or the department, as  
29 the prevailing party in a judicial or administrative action brought or maintained without  
30 the support of justiciable issues of fact or law, to recover all costs of the administrative  
31 or judicial action, including reasonable attorney's fees, and of the department and the  
32 taxpayer to settle such claims through negotiations (see ss. 57.105 and 57.111).

### 33 34 (4) THE RIGHT TO CONFIDENTIALITY.—

35  
36 (a) The right to have information kept confidential, including federal tax information, ad  
37 valorem tax returns, social security numbers, all financial records produced by the  
38 taxpayer, Form DR-219 returns for documentary stamp tax information, and sworn  
39 statements of gross income, copies of federal income tax returns for the prior year,  
40 wage and earnings statements (W-2 forms), and other documents (see ss. 192.105,  
41 193.074, 193.114(5), 195.027(3) and (6), and 196.101(4)(c)).

42  
43 (b) The right to limiting access to a taxpayer's records by a property appraiser, the  
44 Department of Revenue, and the Auditor General only to those instances in which it is  
45 determined that such records are necessary to determine either the classification or the  
46 value of taxable nonhomestead property (see s. 195.027(3))."

## 2021~~0~~ Value Adjustment Board Training - Module 1

1  
2 **History.**—ss. 11, 15, ch. 2000-312; s. 7, ch. 2001-137; s. 1, ch. 2002-18; s. 2, ch. 2003-34; s. 13,  
3 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.  
4 2010-5; s. 53, ch. 2011-151; s. 2, ch. 2012-193; s. 1, ch. 2016-128.

### 5 6 7 **Taxpayer Rights in Rule 12D-9.001, F.A.C.**

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

9  
10 The entire text of this section of the Florida Administrative Code is presented below in  
11 italics.

12  
13 *“(1) Taxpayers are granted specific rights by Florida law concerning value adjustment*  
14 *board procedures.*

15  
16 *(2) These rights include:*

17  
18 *(a) The right to be notified of the assessment of each taxable item of property in*  
19 *accordance with the notice provisions set out in Florida Statutes for notices of proposed*  
20 *property taxes;*

21  
22 *(b) The right to request an informal conference with the property appraiser regarding the*  
23 *correctness of the assessment or to petition for administrative or judicial review of*  
24 *property assessments. An informal conference with the property appraiser is not a*  
25 *prerequisite to filing a petition for administrative review or an action for judicial review;*  
26

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

30  
31 *(d) The right to state on the petition the approximate time anticipated by the taxpayer to*  
32 *present and argue his or her petition before the Board;*

33  
34 *(e) The right to authorize another person to file a board petition on the taxpayer’s*  
35 *property assessment;*

36  
37 *(f) The right, regardless of whether the petitioner initiates the evidence exchange, to*  
38 *receive from the property appraiser a copy of the current property record card*  
39 *containing information relevant to the computation of the current assessment, with*  
40 *confidential information redacted. This includes the right to receive such property record*  
41 *card when the property appraiser receives the petition from the board clerk, at which*  
42 *time the property appraiser will either send the property record card to the petitioner or*  
43 *notify the petitioner how to obtain it online;*  
44

## 2021~~0~~ Value Adjustment Board Training - Module 1

- 1 (g) *The right to be sent prior notice of the date for the hearing of the taxpayer's petition*  
2 *by the value adjustment board and the right to the hearing within a reasonable time of*  
3 *the scheduled hearing;*  
4
- 5 (h) *The right to reschedule a hearing a single time for good cause, as described in this*  
6 *chapter;*  
7
- 8 (i) *The right to be notified of the date of certification of the county's tax rolls;*  
9
- 10 (j) *The right to represent himself or herself or to be represented by another person who*  
11 *is authorized by the taxpayer to represent the taxpayer before the board;*  
12
- 13 (k) *The right, in counties that use special magistrates, to a hearing conducted by a*  
14 *qualified special magistrate appointed and scheduled for hearings in a manner in which*  
15 *the board, board attorney, and board clerk do not consider any assessment reductions*  
16 *recommended by any special magistrate in the current year or in any previous year.*  
17
- 18 (l) *The right to have evidence presented and considered at a public hearing or at a time*  
19 *when the petitioner has been given reasonable notice;*  
20
- 21 (m) *The right to have witnesses sworn and to cross-examine the witnesses;*  
22
- 23 (n) *The right to be issued a timely written decision within 20 calendar days of the last*  
24 *day the board is in session pursuant to Section 194.034, F.S., by the value adjustment*  
25 *board containing findings of fact and conclusions of law and reasons for upholding or*  
26 *overturning the determination of the property appraiser or tax collector;*  
27
- 28 (o) *The right to advertised notice of all board actions, including appropriate narrative*  
29 *and column descriptions, in brief and nontechnical language;*  
30
- 31 (p) *The right to bring an action in circuit court to appeal a value adjustment board*  
32 *valuation decision or decision to disapprove a classification, exemption, portability*  
33 *assessment difference transfer, or to deny a tax deferral or to impose a tax penalty;*  
34
- 35 (q) *The right to have federal tax information, ad valorem tax returns, social security*  
36 *numbers, all financial records produced by the taxpayer and other confidential taxpayer*  
37 *information, kept confidential; and*  
38
- 39 (r) *The right to limiting the property appraiser's access to a taxpayer's records to only*  
40 *those instances in which it is determined that such records are necessary to determine*  
41 *either the classification or the value of taxable nonhomestead property."*

# 2021 Value Adjustment Board Training - Module 1

## **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



## 2021~~0~~ Value Adjustment Board Training - Module 2

- 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 ~~Note: Legislation enacted in 2018, effective July 1, 2018, added that the value~~  
17 ~~adjustment board will meet to hear appeals of the property appraiser's denials of~~  
18 ~~abatements, under section 197.318, F.S., of taxes for homestead residential~~  
19 ~~improvements damaged or destroyed by Hurricane Hermine, Matthew, or Irma. See~~  
20 ~~Chapter 2018-118, section 14, Law of Florida (CS/HB 7087).~~

21  
22 The Board may not meet earlier than July 1 to hear appeals pertaining to the denial of  
23 exemptions, agricultural and high-water recharge classifications, classifications as  
24 historic property used for commercial or certain nonprofit purposes, and deferrals. See  
25 Rule 12D-9.005(1)(b), F.A.C.

26  
27 The Board shall remain in session until its duties are completed concerning all  
28 assessment rolls or parts of assessment rolls. See Rule 12D-9.005(1)(c), F.A.C.

29  
30 The Board may temporarily recess, but shall reconvene when necessary to hear  
31 petitions, complaints, or appeals and disputes filed upon the roll or portion of the roll  
32 when approved. See Rule 12D-9.005(1)(c), F.A.C.

33  
34 Failure on three occasions in any single tax year for the Board to convene at the  
35 scheduled time of meetings of the Board is grounds for removal from office by the  
36 Governor for neglect of duties. See Rule 12D-9.005(5), F.A.C.

37  
38 The Board shall make its decisions timely so that the Board clerk may observe the  
39 requirement that the decisions be issued within 20 calendar days of the last day the  
40 Board is in session pursuant to Section 194.034, F.S. See Rule 12D-9.005(1)(c), F.A.C.

41  
42 Boards may have additional internal operating procedures, not rules, which do not  
43 conflict with, change, expand, suspend, or negate the rules adopted in this rule chapter  
44 or other provisions of law, and only to the extent indispensable for the efficient operation  
45 of the Board process. See Rule 12D-9.005(2)(a), F.A.C.

46

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

5  
6 The Board shall not provide notices or establish a local procedure instructing petitioners  
7 to contact the property appraiser's or tax collector's office or any other agency with  
8 questions about Board hearings or procedures. See Rule 12D-9.005(2)(c), F.A.C.

9  
10 \* The Board, Board legal counsel, Board clerk, special magistrate or other Board  
11 representative shall not otherwise enlist the property appraiser's or tax collector's  
12 office to perform administrative duties for the Board. See Rule 12D-9.005(2)(c), F.A.C.

13  
14 \* Personnel performing any of the Board's duties shall be independent of the property  
15 appraiser's and tax collector's office. See Rule 12D-9.005(2)(c), F.A.C.

16  
17 However, Rule 12D-9.005, F.A.C., does not prevent:

- 18  
19 1. The Board clerk or personnel performing Board duties from referring petitioners to  
20 the property appraiser or tax collector for issues within the responsibility of the  
21 property appraiser or tax collector; or  
22  
23 2. The property appraiser from providing data to assist the Board clerk with the notice  
24 of tax impact. See Rule 12D-9.005(2)(c), F.A.C.

25  
26 Other duties of value adjustment boards are set forth in other areas of Florida law.  
27 Value adjustment boards shall perform all duties required by law and shall abide by all  
28 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**

29  
30  
31 The clerk of the governing body of the county shall be the clerk of the value adjustment  
32 board. See Rule 12D-9.006(1), F.A.C.

33  
34  
35 The Board clerk may delegate to a member of his or her staff the day-to-day  
36 responsibilities for the Board, but is ultimately responsible for the operation of the  
37 Board. See Rule 12D-9.006~~(2)(+)~~, F.A.C.

38  
39 It is the Board clerk's responsibility to verify, through Board legal counsel, that the Board  
40 has met all of the requirements for the organizational meeting before the Board or  
41 special magistrates hold hearings. See Rule 12D-9.007(1), F.A.C.

42  
43 \* If the Board clerk determines that any of the requirements are not met, he or she  
44 shall contact the Board legal counsel or the Board chair regarding the deficiencies  
45 and shall cancel any scheduled hearings until the requirements are met. See Rule  
46 12D-9.007(1), F.A.C.

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1  
2 In counties with a population of more than 75,000, the Board clerk shall provide  
3 notification annually to qualified individuals or their professional associations of  
4 opportunities to serve as special magistrates. See Rule 12D-9.007(7), F.A.C.

5  
6 The Board clerk shall make petition forms available to the public upon request. See Rule  
7 12D-9.007(2), F.A.C.

8  
9 The Board clerk shall receive and acknowledge completed petitions and promptly  
10 furnish a copy of all completed and timely filed petitions to the property appraiser or tax  
11 collector. See Rule 12D-9.007(3), F.A.C.

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

15  
16 The Board clerk shall prepare a schedule of appearances before the Board based on  
17 petitions timely filed with him or her. See Rule 12D-9.007(4), F.A.C.

18  
19 \* If the petitioner has indicated on the petition an estimate of the amount of time he or  
20 she will need to present and argue the petition, the Board clerk must take this  
21 estimate into consideration when scheduling the hearing. See Rule 12D-9.007(4),  
22 F.A.C.

23  
24 The Board clerk shall schedule hearings to allow sufficient time for evidence to be  
25 presented and considered and to allow for hearings to begin at their scheduled time.  
26 See Rule 12D-9.007(9), F.A.C.

27  
28 \* The Board clerk shall advise the Board chair if the Board's tentative schedule for  
29 holding hearings is insufficient to allow for proper scheduling. See Rule 12D-9.007(9),  
30 F.A.C.

31  
32 Under Rule 12D-9.007(5), F.A.C., no less than 25 calendar days before the day of the  
33 petitioner's scheduled appearance for the hearing, the Board clerk must:

- 34  
35 1. Notify the petitioner of the date and time scheduled for the appearance; and  
36  
37 2. Simultaneously notify the property appraiser or tax collector.

38  
39 Under Rule 12D-9.007(6), F.A.C., if an incomplete petition, which includes a petition not  
40 accompanied by the required filing fee, is received within the time required, the Board  
41 clerk shall:

- 42  
43 1. Notify the petitioner of the incomplete petition; and  
44  
45 2. Allow the petitioner an opportunity to complete the petition within 10 calendar days  
46 from the date the notice of incomplete petition is mailed.

## 2021~~0~~ Value Adjustment Board Training - Module 2

- 1  
2 \* The re-filed petition shall be considered timely if completed and filed, including  
3 payment of the fee if previously unpaid, within the time frame provided in the  
4 Board clerk's notice of incomplete petition. See Rule 12D-9.007(6), F.A.C.  
5

6 The Board clerk shall ensure public notice of and access to all hearings. See Rule 12D-  
7 9.007(8), F.A.C.  
8

- 9 \* This public notice shall contain a general description of the locations, dates, and  
10 times hearings are being scheduled. See Rule 12D-9.007(8), F.A.C.  
11

- 12 \* This public notice requirement may be satisfied by making the notice available on  
13 the Board clerk's website. See Rule 12D-9.007(8), F.A.C.  
14

15 Hearings must be conducted in facilities that are clearly identified for such purpose and  
16 are freely accessible to the public while hearings are being conducted. See Rule 12D-  
17 9.007(8), F.A.C.  
18

- 19 \* The Board clerk shall assure proper signage to identify the hearing facilities. See  
20 Rule 12D-9.007(8), F.A.C.  
21

22 The Board clerk shall timely notify the parties of the Board's decision so that the  
23 decision shall be issued within 20 calendar days of the last day the Board is in session  
24 pursuant to section 194.034, F.S., and shall otherwise notify the property appraiser or  
25 tax collector of the decision. Notification of the petitioner must be by first class mail or by  
26 electronic means as set forth in section 194.034(2) or section 192.048, F.S. See Rule  
27 12D-9.007(10), F.A.C.  
28

29 In counties using special magistrates, the Board clerk shall also make available to both  
30 parties as soon as practicable a copy of the recommended decision of the special  
31 magistrate by mail or electronic means. See Rule 12D-9.007(10), F.A.C.  
32

33 No party shall have access to decisions prior to any other party. See Rule 12D-9.007(10),  
34 F.A.C.  
35

36 After the Board has decided all petitions, complaints, appeals and disputes, the Board  
37 clerk shall make public notice of the findings and results of the Board in the manner  
38 prescribed in Section 194.037, F.S., and by the Department. See Rule 12D-9.007(11),  
39 F.A.C.  
40

41 Rule 12D-9.007(12), F.A.C., states the following.  
42

43 *"The board clerk is the official record keeper for the board and shall maintain a record of*  
44 *the proceedings which shall consist of:*  
45

46 (a) *All filed documents;*

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1  
2 *(b) A verbatim record of any hearing;*

3  
4 *(c) All tangible exhibits and documentary evidence presented;*

5  
6 *(d) Any meeting minutes; and*

7  
8 *(e) Any other documents or materials presented on the record by the parties or by the*  
9 *board or special magistrate.”*

10  
11 Under Rule 12D-9.007(12), F.A.C., the Board clerk shall maintain the hearing record as  
12 follows:

- 13  
14 1. For four years after the final decision has been rendered by the Board, if no appeal  
15 is filed in circuit court; or  
16  
17 2. For five years if an appeal is filed in circuit court; or  
18  
19 3. If requested by one of the parties, until the final disposition of any subsequent  
20 judicial proceeding relating to the property.  
21

22 The Board clerk shall make available to the public copies of all additional internal  
23 operating procedures and forms of the Board or special magistrates described in Rule  
24 12D-9.005, F.A.C., and shall post any such procedures and forms on the Board clerk's  
25 website, if the Board clerk has a website. See Rule 12D-9.007(13), F.A.C.

26  
27 \* These materials shall be consistent with Department rules and forms. See Rule 12D-  
28 9.007(13), F.A.C.

29  
30 \* Making materials available on a website is sufficient; however, the Board clerk shall  
31 make appropriate provisions for persons that have hardship. See Rule 12D-9.007(13),  
32 F.A.C.  
33

34 The Board clerk shall notify the chief executive officer of each municipality within which  
35 petitioned property is located, as provided in Section 193.116, F.S. See Rule 12D-  
36 9.007(14), F.A.C.

37  
38 The Board clerk shall also publish any notice required by Section 196.194, F.S. See Rule  
39 12D-9.007(14), F.A.C.  
40

### 41 **Requirements for Appointment of Board Legal Counsel**

42 Each value adjustment board must appoint private legal counsel to assist the Board.  
43 See Rule 12D-9.008(1), F.A.C.  
44

45  
46 Under Rule 12D-9.008(2), F.A.C., to be appointed as Board legal counsel, an attorney:

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- 1
- 2 1. Must be an attorney in private practice;
- 3
- 4 2. Must not be employed by government; and
- 5
- 6 3. Must have practiced law for over five years and must meet the requirements of
- 7 section 194.015, F.S.

8  
9 An attorney may represent more than one value adjustment board. See Rule 12D-  
10 9.008(3), F.A.C.

11  
12 The private counsel may not represent the property appraiser, the tax collector, any  
13 taxing authority, or any property owner in any administrative or judicial review of  
14 property taxes. See Section 194.015, F.S.

15  
16 \* An attorney may represent a Board, even if another member of the attorney's law  
17 firm represents one of the parties listed in Section 194.015, F.S., so long as the  
18 representation is not before the Board. See Rule 12D-9.008(4), F.A.C.

19  
20 The Department has issued two bulletins containing additional information about the  
21 qualifications for Board legal counsel. These bulletins are available on the  
22 Department's website at the following links:

23  
24 [Bulletin 2008-12](#)

25  
26 [Bulletin 2008-18](#)

27  
28 The Florida Attorney General has issued an opinion regarding the qualifications for  
29 Board legal counsel. See AGO [2008-55](#).

### 30 31 32 **The Role of Legal Counsel to the Value Adjustment Board**

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

34  
35 *"The board legal counsel shall have the responsibilities listed below consistent with the*  
36 *provisions of law.*

37  
38 (a) *The primary role of the board legal counsel shall be to advise the board on all*  
39 *aspects of the value adjustment board review process to ensure that all actions*  
40 *taken by the board and its appointees meet the requirements of law.*

41  
42 (b) *Board legal counsel shall advise the board in a manner that will promote and*  
43 *maintain a high level of public trust and confidence in the administrative review*  
44 *process.*

45

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- 1 (c) *The board legal counsel is not an advocate for either party in a value adjustment*  
2 *board proceeding, but instead ensures that the proceedings are fair and consistent*  
3 *with the law.*  
4
- 5 (d) *Board legal counsel shall advise the board of the actions necessary for compliance*  
6 *with the law.*  
7
- 8 (e) *Board legal counsel shall advise the board regarding:*  
9
- 10 1. *Composition and quorum requirements;*
  - 11
  - 12 2. *Statutory training and qualification requirements for special magistrates and*  
13 *members of the board;*
  - 14
  - 15 3. *Legal requirements for recommended decisions and final decisions;*  
16
  - 17 4. *Public meeting and open government laws; and*  
18
  - 19 5. *Any other duties, responsibilities, actions or requirements of the board consistent*  
20 *with the laws of this state.”*  
21

22 Legal counsel must avoid conflicts of interest or the appearance of a conflict of interest  
23 in their representation of the Board. See Rule 12D-9.008(5), F.A.C.  
24

25 The Board attorney shall review and respond to written complaints alleging  
26 noncompliance with the law by the Board, special magistrates, Board clerk, and the  
27 parties. See Rule 12D-9.009(1)(f), F.A.C.  
28

29 \* This requirement does not apply to routine requests for reconsideration, requests for  
30 rescheduling, and pleadings and argument in petitions. See Rule 12D-9.009(1)(f),  
31 F.A.C.  
32

33 \* The Board attorney shall send a copy of the complaint along with the response to  
34 the Department of Revenue. See Rule 12D-9.009(1)(f), F.A.C.  
35

36 Upon being appointed, the Board attorney shall send his or her contact information to  
37 the Department of Revenue by mail, fax, or e-mail. See Rule 12D-9.009(2), F.A.C.  
38

39 \* The contact information must include the legal counsel's name, mailing address,  
40 telephone number, fax number, and e-mail address. See Rule 12D-9.009(2), F.A.C.  
41

### The Role of Board Legal Counsel Regarding Applicable Statutory Criteria

42 It is critical that the Board attorney assure, by the beginning of the hearing, that the  
43 Board or special magistrate is aware of and has copies of the statutory criteria that  
44 apply to the petition under review.  
45  
46

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1 \* In counties that do not use special magistrates, it is especially important for the  
2 Board attorney to provide to each Board member, by the beginning of the hearing,  
3 copies of the statutory criteria that apply to the petition under review and to clearly  
4 answer any questions Board members may have regarding such criteria.  
5  
6

### 7 **Requirements for Appointment of Special Magistrates**

8 In counties with populations of more than 75,000, the Board shall appoint special  
9 magistrates to take testimony and make recommendations on petitions filed with the  
10 Board. See Rule 12D-9.010(1), F.A.C.  
11

12 Special magistrates shall be selected from a list maintained by the Board clerk of  
13 qualified individuals who are willing to serve. See Rule 12D-9.010(1), F.A.C.  
14

15 Regarding requirements for appointing special magistrates, Rule 12D-9.010(1), F.A.C.,  
16 further states the following:  
17

18 *“When appointing special magistrates, the board, board attorney, and board clerk shall*  
19 *not consider any assessment reductions recommended by any special magistrate in the*  
20 *current year or in any previous year.”*  
21

22 Rule 12D-9.010(5)(b), F.A.C., requires that the selection of a special magistrate must:  
23

- 24 1. Be based solely on the experience and qualifications of the magistrate; and
- 25
- 26 2. Not be influenced by any party, or prospective party, to a Board proceeding or by
- 27 any such party with an interest in the outcome of the proceeding.  
28

29 When appointing special magistrates or scheduling special magistrates for specific  
30 hearings, the board, board attorney, and board clerk may not consider the dollar amount  
31 or percentage of any assessment reductions any special magistrate has recommended  
32 in the current year or in any previous year. See Chapter 2016-128, Section 12, Laws of  
33 Florida (CS/CS/HB 499).  
34

35 In counties with populations of 75,000 or less, the Board shall have the option of using  
36 special magistrates. See Rule 12D-9.010(2), F.A.C.  
37

38 \* The Department shall make available to these counties a list of qualified special  
39 magistrates. See Rule 12D-9.010(2), F.A.C.  
40

41 A person does not have to be a resident of the county in which he or she serves as a  
42 special magistrate. See Rule 12D-9.010(3), F.A.C.  
43

44 Rule 12D-9.010(4), F.A.C., states the following:  
45

46 *“The special magistrate must meet the following qualifications:*



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- 1
- 2 (a) *A special magistrate must not be an elected or appointed official or employee of the*
- 3 *county.*
- 4
- 5 (b) *A special magistrate must not be an elected or appointed official or employee of a*
- 6 *taxing jurisdiction or of the State.*
- 7
- 8 (c) *During a tax year in which a special magistrate serves, he or she must not*
- 9 *represent any party before the board in any administrative review of property taxes.*
- 10
- 11 (d) *All special magistrates must meet the qualifications specified in Section 194.035,*
- 12 *F.S.”*
- 13

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

- 20
- 21 1. Be a member of The Florida Bar with no less than five years of experience in the
- 22 area of ad valorem taxation and have received the Department’s training; or
- 23
- 24 2. Be a member of The Florida Bar with no less than three years of experience in the
- 25 area of ad valorem taxation and have completed the Department’s training including
- 26 the exam.
- 27

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

- 31
- 32 1. Have not less than five years of real property valuation experience and have
- 33 received the Department’s training; or
- 34
- 35 2. Have not less than three years of real property valuation experience and have
- 36 completed the Department’s training including the exam.
- 37

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

- 40
- 41 1. A Florida certified residential appraiser appointed by the Board shall only hear
- 42 petitions on the valuation of residential real property of one to four residential units
- 43 and shall not hear petitions on other types of real property. See Rule 12D-
- 44 9.010(4)(d)2.a., F.A.C.
- 45

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1 2. A Florida certified general appraiser appointed by the Board may hear petitions on  
2 the valuation of any type of real property. See Rule 12D-9.010(4)(d)2.b., F.A.C.

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

8  
9 1. Have not less than five years of experience in tangible personal property valuation  
10 and have received the Department's training; or

11  
12 2. Have not less than three years of experience in tangible personal property valuation  
13 and have completed the Department's training including the exam.

14  
15 All special magistrates shall receive or complete an annual training program provided by  
16 the Department of Revenue, as described above. See Rule 12D-9.010(4)(d)4., F.A.C.

17  
18 \* Special magistrates with less than five years of experience must show that they  
19 have completed the training by taking a written examination provided by the  
20 Department. See Rule 12D-9.010(4)(d)4., F.A.C.

21  
22 \* A special magistrate must receive or complete any required training prior to holding  
23 hearings. See Rule 12D-9.010(4)(d)4., F.A.C.

24  
25 The Board or Board legal counsel must verify a special magistrate's qualifications  
26 before appointing the special magistrate. See Rule 12D-9.010(5)(a), F.A.C.

### 27 28 29 **The Role of Special Magistrates**

30 The Florida Attorney General has recognized that:

31  
32 1. A special magistrate is a quasi-judicial officer who "stands in the shoes" of the Board  
33 in carrying out decision-making duties delegated by the Board; and

34  
35 2. The official acts of the special magistrate are subject to Florida's Government-in-the-  
36 Sunshine law in section 286.011, F.S. See Attorney General Opinion [2010-15](#).

37  
38 Rule 12D-9.011(1), F.A.C., states the following:

39  
40 *"The role of the special magistrate is to conduct hearings, take testimony and make*  
41 *recommendations to the board regarding petitions filed before the board. In carrying out*  
42 *these duties the special magistrate shall:*

43  
44 (a) *Accurately and completely preserve all testimony, documents received, and*  
45 *evidence admitted for consideration;*

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- 1 (b) *At the request of either party, administer the oath upon the property appraiser or*  
2 *tax collector, each petitioner and all witnesses testifying at a hearing;*  
3  
4 (c) *Conduct all hearings in accordance with the rules prescribed by the Department*  
5 *and the laws of the state; and*  
6  
7 (d) *Make recommendations to the board which shall include proposed findings of fact,*  
8 *proposed conclusions of law, and the reasons for upholding or overturning the*  
9 *determination of the property appraiser or tax collector. Also, see Rule 12D-9.030,*  
10 *F.A.C.”*

11  
12 Special magistrates must adhere to Rule 12D-9.022, F.A.C., relating to disqualification  
13 or recusal. See Rule 12D-9.010(5)(b), F.A.C.

14  
15 The special magistrate shall perform other duties as set out in the rules of the  
16 Department and other areas of Florida law, and shall abide by all limitations on the  
17 special magistrate’s authority as provided by law. See Rule 12D-9.011(2), F.A.C.

### **The Role of the Property Appraiser**

18  
19  
20 The property appraiser shall assess all property located within the county each year.  
21 See Section 192.011, F.S.

22  
23  
24 Each year, the property appraiser shall prepare the real property assessment roll and  
25 the tangible personal property assessment roll. See Section 193.114, F.S.

26  
27 Each year, the property appraiser shall prepare and deliver by first class mail to each  
28 taxpayer listed on the current year’s assessment roll a notice of proposed property  
29 taxes. See Section 200.069, F.S.

30  
31 *“The property appraiser or a member of his or her staff shall confer with the taxpayer*  
32 *regarding the correctness of the assessment.”* See Rule 12D-9.002(2), F.A.C.

33  
34 The property appraiser shall make available to petitioners the blank petition form  
35 adopted or approved by the Department. See section 194.011(3)(a), F.S., and Rule 12D-  
36 9.015(5), F.A.C.

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

45

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1 When requested by a petitioner for purposes of filing a petition, the property appraiser  
2 shall provide to the petitioner a determination of whether certain multiple, contiguous,  
3 undeveloped parcels are substantially similar in nature. See Rule 12D-9.015(8)~~(5)~~, F.A.C.

4  
5 Legislation enacted in 2015 added section 194.011(3)(g), F.S., to provide that an owner  
6 of multiple tangible personal property accounts may file with the value adjustment board  
7 a single joint petition if the property appraiser determines that the tangible personal  
8 property accounts are substantially similar in nature. See Chapter 2015-115, Section 1,  
9 Laws of Florida (CS for HB 489).

10  
11 When requested by a petitioner for purposes of filing a petition on behalf of association  
12 members, the property appraiser shall provide to the petitioner a determination of  
13 whether certain multiple real property parcels are substantially similar regarding  
14 location, proximity to amenities, number of rooms, living area, and condition. See Rule  
15 12D-9.015(8)~~(5)~~, F.A.C.

16  
17 The property appraiser shall not provide information to taxpayers regarding Board  
18 hearings or procedures, and shall not perform administrative duties for the Board. See  
19 Rule 12D-9.005(2)(c), F.A.C.

20  
21 The property appraiser shall not attempt to control or influence any part of the value  
22 adjustment board process. See Rule 12D-9.023(1), F.A.C.

23  
24 The property appraiser must not attempt to influence the selection of any special  
25 magistrate. See Subsection 194.035(1), F.S., and Rule 12D-9.010(5)(b), F.A.C.

26  
27 If the property appraiser communicates a reasonable belief that a Board member or  
28 special magistrate has a bias, prejudice, or conflict of interest, the basis for that belief  
29 shall be stated in the record of the proceeding or submitted prior to the hearing in writing  
30 to the Board legal counsel. See Rule 12D-9.022(4)(a), F.A.C.

31  
32 The property appraiser must avoid ex parte communication. See Rules 12D-9.017(1)(a)  
33 and 12D-9.029(8)(b), F.A.C.

34  
35 No later than seven (7) days before the hearing, if the property appraiser receives the  
36 petitioner's documentation and if requested in writing by the petitioner, the property  
37 appraiser shall:

38  
39 1. Provide the petitioner with a list and summary of evidence to be presented at the  
40 hearing accompanied by copies of documentation to be presented by the property  
41 appraiser at the hearing;

42  
43 2. *Include in the evidence list the property record card; and*  
44

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1 3. In calculating the seven (7) days, use calendar days and not include the day of the  
2 hearing in the calculation, and count backwards from the day of the hearing. See  
3 Rule 12D-9.020(2)(b), F.A.C.  
4

5 After the opening of a hearing, the property appraiser shall indicate for the record his or  
6 her determination of value, tax exemption, property classification, or "portability"  
7 assessment difference. See Rule 12D-9.024(7), F.A.C.  
8

9 Under Subsection 194.301(1), F.S., in a hearing on just, classified use, or assessed  
10 value, the property appraiser shall present evidence first. See Rule 12D-9.024(7), F.A.C.  
11

12 In the Board or special magistrate hearing, the property appraiser is responsible for  
13 presenting relevant and credible evidence in support of his or her determination. See  
14 Rule 12D-9.025(3)(a), F.A.C.  
15

16 A property appraiser shall not present undisclosed evidence that was not supplied to the  
17 petitioner as required under the evidence exchange rule, Rule 12D-9.020, F.A.C. See  
18 Rules 12D-9.020(7) and 12D-9.025(4)(f)2., F.A.C.  
19

20 After receiving a Board or special magistrate's remand decision from the Board clerk,  
21 the property appraiser shall follow the appropriate directions from the Board or special  
22 magistrate and shall produce a written remand review. See Rule 12D-9.029(8)(a), F.A.C.  
23

24 The property appraiser may provide data to assist the Board clerk with the notice of tax  
25 impact. See Rules 12D-9.005(2)(c) and 12D-9.038(1), F.A.C.  
26

27 When delivered by the Board, the property appraiser shall attach a copy of the Board's  
28 certification of the assessment roll to each copy of each assessment roll prepared by  
29 the property appraiser. See Rule 12D-9.037(1)(b), F.A.C.  
30

31 Other responsibilities of Florida property appraisers are set forth in Florida law.  
32  
33

### **The Role of the Petitioner**

34 The petitioner is responsible for completing the applicable petition form in accordance  
35 with 2016 legislative amendments referenced in the following note. The updated petition  
36 forms in the Form DR-486 series are available at:  
37

38 <http://floridarevenue.com/property/Pages/Forms.aspx>  
39

40 The Department has adopted rules implementing the 2016 legislation regarding who  
41 may file a petition and under what conditions, and regarding who may represent a  
42 taxpayer in a petition and under what conditions. The content of these rules is  
43 presented where applicable in Module 3 of this training.  
44

45 The petitioner is responsible for paying the appropriate filing fee if required. See Rule  
46 12D-9.015(12)(b), F.A.C.

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

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

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

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

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

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

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## 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 • Identify and avoid conflicts of interest
- 33 • Recognize the requirements for the Board organizational meeting under Rule 12D-9.013(1), F.A.C.
- 34 • Identify the components of the Board's prehearing checklist
- 35 • Select the correct components for a completed petition form
- 36 • Recognize the requirements and procedures for a late filed petition
- 37 • Identify the requirements for the filing and service of documents
- 38 • Recognize ex parte communication and its remedies
- 39 • Identify the procedures and requirements for scheduling hearings
- 40 • Select the correct elements for a notice of hearing
- 41 • Recognize the conditions for rescheduling hearings
- 42 • Recognize the procedures for the exchange of evidence
- 43 • 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  
45 The Board shall annually hold one or more organizational meetings, at least one of  
46 which shall meet the requirements of Rule 12D-9.013, F.A.C.

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46

\* 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.

### **Prehearing Checklist for the Value Adjustment Board**

24  
25  
26 The entire text of Rule 12D-9.014, F.A.C., titled "Prehearing Checklist," is presented  
27 below in italics.

28  
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  
46 \* These forms are available on the Department's website at the following link:

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1 <http://floridarevenue.com/property/Pages/Forms.aspx>

2  
3 \* The Department, the Board clerk, and the property appraiser or tax collector shall  
4 make available to petitioners the blank petition forms adopted or approved by the  
5 Department. See Rule 12D-9.015(5), F.A.C.

6  
7 \* Current and up-to-date petition forms must be used.

8  
9 A “completed” petition is one that provides information for all the required elements that  
10 are displayed on the Department’s form and that is accompanied by the appropriate  
11 filing fee if required. See Rules 12D-9.015(12)(b) and 12D-9.015(2), F.A.C.

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

- 16  
17 1. Describe the property by parcel number;
- 18  
19 2. Be sworn by the petitioner;
- 20  
21 3. State the approximate time anticipated by the petitioner for presenting his or her  
22 case, which the Board clerk must consider in scheduling the hearing, and contain a  
23 space for the petitioner to indicate dates of non-availability for scheduling purposes if  
24 applicable;
- 25  
26 4. Contain a space for the petitioner to indicate on the petition form that he or she does  
27 not wish to attend the hearing but would like for the Board or special magistrate to  
28 consider the petitioner’s evidence without the petitioner attending the hearing;
- 29  
30 5. Contain a statement that the petitioner has the right, regardless of whether the  
31 petitioner initiates the evidence exchange, to receive from the property appraiser a  
32 copy of the property record card containing information relevant to the computation  
33 of the current assessment, with confidential information redacted, along with a  
34 statement that when the property appraiser receives the petition, the property  
35 appraiser will either send the property record card to the petitioner or notify the  
36 petitioner how to obtain the property record card online.
- 37  
38 6. Contain a signature field for the taxpayer to sign the petition and a checkbox for the  
39 taxpayer to indicate that she or he has authorized a representative to receive or  
40 access confidential taxpayer information related to the taxpayer;
- 41  
42 \* Contain a checkbox for the taxpayer to indicate that he or she has authorized a  
43 compensated or uncompensated representative to act on the taxpayer’s behalf;
- 44  
45 \* Contain a signature field for an authorized employee or representative to sign the  
46 petition, when applicable, along with the authorized employee’s or

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1 representative's signed certification under penalty of perjury that he or she has  
2 the taxpayer's authorization to file the petition on the taxpayer's behalf together  
3 with checkboxes for professional information and spaces for license numbers;  
4

- 5 \* Contain a signature field for a compensated or uncompensated representative,  
6 who is not an employee of the taxpayer or of an affiliated entity, and not an  
7 attorney who is a member of the Florida Bar, a real estate appraiser licensed or  
8 certified under Chapter 475, Part II, F.S., a real estate broker licensed under  
9 Chapter 475, Part I, F.S., or a certified public accountant licensed under Chapter  
10 473, F.S., for such representative to sign the petition, and contain checkboxes,  
11 for a compensated representative to indicate he or she is attaching a power of  
12 attorney from the taxpayer, and for an uncompensated representative to indicate  
13 he or she is attaching a written authorization from the taxpayer;  
14

- 15 7. Contain a space for the petitioner to indicate whether the property is four or less  
16 residential units or another property type, provided the Board clerk shall accept the  
17 petition even if this space is not filled in; and  
18  
19 8. Contain a statement that a tangible personal property assessment may not be  
20 contested until a return required by section 193.052, F.S., is timely filed.  
21

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

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

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

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

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

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1  
2 The Board clerk shall accept for filing any completed petition that is timely submitted on  
3 a form approved by the Department, with payment if required. See Rule 12D-9.015(12)(a),  
4 F.A.C.

5  
6 Under Rule 12D-9.015(12)(b), F.A.C., a completed petition is one that:

- 7  
8 1. Provides information for all the required elements that are displayed on the  
9 Department's form;  
10 2. Is accompanied by a power of attorney if required;  
11 3. Is accompanied by written taxpayer authorization if required; and,  
12 4. Is accompanied by the appropriate filing fee if required.  
13

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

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

24 \* A completed petition shall be considered timely if completed and re-filed within the  
25 time frame provided in the Board clerk's notice of incomplete petition. See Rule 12D-  
26 9.015(12)(a), F.A.C.  
27

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

32 \* Filing timeframes for other types of petitions are specified in Rule 12D-9.015(13),  
33 F.A.C.  
34

35 ~~**Note:** The filing timeframe for petitions of the deployed servicemembers exemption~~  
36 ~~is extended for 2020 to the 25th day after the property appraiser mails the notice of~~  
37 ~~proposed property taxes. The petitioner is not required to pay a filing fee for such~~  
38 ~~petition, notwithstanding section 194.013, F.S. See Chapter 2020-10, Section 9, Laws of~~  
39 ~~Florida, (HB 7097), effective upon becoming a law on April 8, 2020, and first applicable to~~  
40 ~~the 2020 ad valorem tax roll.~~  
41

42 To petition either a denial of a portability assessment limitation transfer or the amount of  
43 the transfer, a petitioner may file, on Form DR-486PORT, a petition with the Board in  
44 the county where the new homestead is located. See Rule 12D-9.028(2), F.A.C.  
45

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- 1 \* This portability petition may be filed at any time during the taxable year but must be  
2 filed on or before the 25th day following the mailing of the notice of proposed  
3 property taxes as provided in section 194.011, F.S. See Rule 12D-9.028(2), F.A.C.  
4  
5

### **Persons Authorized to Sign and File Petitions**

6 The following persons may sign and file petitions with the value adjustment board. See  
7 Rule 12D-9.015(9), F.A.C.  
8  
9

- 10 • The taxpayer may sign and file a petition.  
11
- 12 • An employee of the taxpayer or of an affiliated entity or a licensed or certified  
13 professional listed in paragraph 12D-9.018(3)(a), F.A.C., who the taxpayer has  
14 authorized to file a petition and represent the taxpayer and who certifies under  
15 penalty of perjury that he or she has the taxpayer's authorization to file a petition on  
16 the taxpayer's behalf and represent the taxpayer, may sign and file such a petition  
17 that is not signed by the taxpayer and that is not accompanied by the taxpayer's  
18 written authorization.  
19
- 20 • A compensated person, who is not an employee of the taxpayer or of an affiliated  
21 entity and who is not acting as a licensed or certified professional listed in paragraph  
22 12D-9.018(3)(a), F.A.C., may sign and file a petition on the taxpayer's behalf if the  
23 taxpayer has authorized such person by power of attorney. If the petition is not  
24 signed by the taxpayer, such person must provide a copy of the power of attorney to  
25 the board clerk at the time the petition is filed. This power of attorney is valid only for  
26 representing a single taxpayer in a single assessment year, and must identify the  
27 parcels or accounts for which the person is authorized to represent the taxpayer and  
28 must conform to the requirements of Chapter 709, Part II, F.S. A taxpayer may use a  
29 Department of Revenue form to grant the power of attorney or may use a different  
30 form provided it meets the requirements of Chapter 709, Part II, and Section  
31 194.034(1), F.S. The Department has adopted Form DR-486POA, Power of Attorney  
32 for Representation Before the Value Adjustment Board, which is incorporated by  
33 reference in Rule 12D-16.002, F.A.C., as a form available to taxpayers for granting  
34 the power of attorney.  
35
- 36 • An uncompensated person, who has a taxpayer's signed written authorization to  
37 represent the taxpayer, is authorized to sign and file a petition on the taxpayer's  
38 behalf if, at the time the petition is filed, such person provides a copy of the  
39 taxpayer's written authorization to the Board clerk with the petition or the taxpayer's  
40 signed written authorization is contained on the petition form. This written  
41 authorization is valid only for representing a single taxpayer in a single assessment  
42 year and must identify the parcels or accounts for which the person is authorized to  
43 represent the taxpayer. A taxpayer may use a Department of Revenue form to grant  
44 the authorization in writing or may use a different form provided it meets the  
45 requirements of Section 194.034(1), F.S. The Department has adopted Form DR-  
46 486A, Written Authorization for Representation Before the Value Adjustment Board,



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1 which is incorporated by reference in Rule 12D-16.002, F.A.C., as a form available to  
2 taxpayers for granting the written authorization.

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

7  
8 Note: Legislation enacted in 2021 amended section 194.011(3), F.S., to clarify that a  
9 condominium association, as defined in s. 718.103, a cooperative association as  
10 defined in s. 719.103, or any homeowners' association as defined in s. 723.075, with  
11 approval of its board of administration or directors, may file with the value adjustment  
12 board a single joint petition on behalf of any association members who own units or  
13 parcels of property which the property appraiser determines are substantially similar  
14 with respect to location, proximity to amenities, number of rooms, living area, and  
15 condition. Requires an association to notify its members of its intention to petition the  
16 value adjustment board and include in the notice a statement that, by not opting out of  
17 the petition, the unit or parcel owner agrees that the association shall also represent the  
18 unit or parcel owner in any related proceedings. Amendments created provisions for the  
19 association to continue to represent owners in subsequent circuit court proceedings. See  
20 Chapter 2021-209, Section 1, Laws of Florida, (HB 649), effective July 1, 2021.

### **Procedures for Duplicate and Unauthorized Petitions**

23  
24 If duplicate petitions are filed on the same property, the Board clerk shall contact the  
25 taxpayer and all petitioners to identify whether a person has the taxpayer's authorization  
26 to file a petition and represent the taxpayer, and resolve the issue in accordance with  
27 Rule Chapter 12D-9, F.A.C. See Rule 12D-9.015(11), F.A.C.

28  
29 If a taxpayer notifies the Board that an unauthorized petition has been filed for the  
30 taxpayer's property, the Board may require the person who filed the petition to provide  
31 to the Board, before a hearing is held on such petition, the taxpayer's written  
32 authorization for the person to file the petition and represent the taxpayer. See Rule 12D-  
33 9.015(10)(a), F.A.C.

34  
35 If the Board finds that an employee or a professional listed in paragraph 12D-  
36 9.018(3)(a), F.A.C., knowingly and willfully filed a petition not authorized by the  
37 taxpayer, the Board shall require such employee or professional to provide to the Board  
38 clerk, before any petition filed by that employee or professional is heard, the taxpayer's  
39 written authorization for the employee or professional to represent the taxpayer. This  
40 Board requirement shall extend for one year after the Board's imposition of the  
41 requirement. See Rule 12D-9.015(10)(b), F.A.C.

### **Procedures for Late Filed Petitions**

42  
43  
44  
45 The Board may not extend the time for filing a petition. See Rule 12D-9.015(14)(a), F.A.C.

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

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

- 7  
8 1. The petitioner has demonstrated “good cause” justifying consideration of the petition;  
9 and  
10  
11 2. The delay will not, in fact, be harmful to the performance of Board functions in the  
12 taxing process. See Rule 12D-9.015(14)(a), F.A.C.

13  
14 Under Rule 12D-9.015(14)(a), F.A.C., “Good cause” means the verifiable showing of  
15 extraordinary circumstances, as follows:

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

30  
31 The Board clerk shall accept but not schedule for hearing a petition submitted to the  
32 Board after the statutory deadline has expired. See Rule 12D-9.015(14)(b), F.A.C.

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

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

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

45

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

3  
4 \* The Board or a Board designee, which includes the Board legal counsel or a special  
5 magistrate, shall determine whether the petitioner has demonstrated, in writing, good  
6 cause justifying consideration of the petition. See Rule 12D-9.015(14)(d), F.A.C.

7  
8 \* If the Board or a Board designee determines that the petitioner has demonstrated  
9 good cause, the Board clerk shall accept the petition for filing and so notify the  
10 petitioner and the property appraiser or the tax collector. See Rule 12D-9.015(14)(d),  
11 F.A.C.

12  
13 \* If the Board or a Board designee determines that the petitioner has not  
14 demonstrated good cause, or if the petition is not accompanied by a written  
15 explanation for the delay in filing, the Board clerk shall notify the petitioner and the  
16 property appraiser or tax collector. See Rule 12D-9.015(14)(e), F.A.C.

17  
18 A person who files a petition may timely file an action in circuit court to preserve the  
19 right to proceed in circuit court (See sections 193.155(8)(l), 194.036, 194.171(2), and  
20 196.151, F.S.). See Rule 12D-9.015(14)(f), F.A.C.

### 21 22 23 **Acknowledgment of Timely Filed Petitions**

24 The Board clerk shall accept all completed petitions, as defined by statute and Rule  
25 12D-9.015(2), F.A.C. See Rule 12D-9.015(15), F.A.C.

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

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

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

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

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46

**Requirements for Filing and Service of Documents**

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

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

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

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

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

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

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

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

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

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

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

5  
6 **Prohibition of Ex Parte Communication**

7 A participant shall not communicate with a Board member or the special magistrate  
8 regarding the issues in the petition without:  
9

- 10 1. The other party being present; or  
11  
12 2. Providing a copy of any written communication to the other party. See Rule 12D-  
13 9.017(1)(a), F.A.C.  
14

15 \* In this context, “participant” includes the petitioner, the property appraiser, the Board  
16 clerk, the special magistrate, a Board member, any other person directly or indirectly  
17 interested in the proceeding, and anyone authorized to act on behalf of any party.  
18

19 \* This rule shall not prohibit internal communications among the Board clerk, Board,  
20 special magistrates, and Board legal counsel, regarding internal operations of the  
21 Board and other administrative matters. See Rule 12D-9.017(1)(b), F.A.C.  
22

23 \* The special magistrate is specifically authorized to communicate with the Board’s  
24 legal counsel or Board clerk on legal matters or other issues regarding a petition.  
25 See Rule 12D-9.017(1)(b), F.A.C.  
26

27 A Board member or special magistrate shall immediately place on the record any  
28 attempt by the property appraiser, tax collector, taxpayer, or taxpayer’s agent to provide  
29 information or discuss issues, without the presence of the opposing party, with the  
30 Board member or special magistrate regarding a petition before or after the hearing.  
31 See Rule 12D-9.017(2), F.A.C.  
32

33 Under Rule 12D-9.017(3), F.A.C., the Board or the special magistrate shall not consider  
34 the ex parte communication unless each of the following three elements is true:  
35

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

43  
44 **Representation of the Taxpayer**

45 A taxpayer has the right, at the taxpayer’s own expense and subject to the petition filing  
46 requirements set forth in Rule Chapter 12D-9, F.A.C., to be represented before the

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1 board by a person described in Rule 12D-9.018(3), F.A.C. See Rule 12D-9.018(1), F.A.C.

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

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

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

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

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

32  
33 3. A person who provides to the board clerk at the time the petition is filed a power of  
34 attorney authorizing such person to act on the taxpayer's behalf, may represent the  
35 taxpayer. The power of attorney: is valid only for representing a single taxpayer in a  
36 single assessment year, must identify the parcels or accounts for which the person is  
37 authorized to represent the taxpayer, and must conform to the requirements of  
38 Chapter 709, Part II, F.S. A taxpayer may use a Department of Revenue form to  
39 grant the power of attorney or may use a different form, provided it meets the  
40 requirements of Chapter 709, Part II, and Section 194.034(1), F.S. The Department  
41 has adopted Form DR-486POA, titled Power of Attorney for Representation Before  
42 the Value Adjustment Board, which is incorporated by reference in Rule 12D-16.002,  
43 F.A.C., as a form available to taxpayers for granting the power of attorney. See Rule  
44 12D-9.018(3)(b), F.A.C.

45  
46 4. An uncompensated person who provides to the board clerk at the time the petition is  
47 filed, the taxpayer's written authorization for such person to act on the taxpayer's

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

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

### **Procedures for Scheduling Hearings**

14  
15  
16  
17       The Board clerk shall prepare a schedule of appearances before the Board or special  
18       magistrates based on timely filed petitions. See Rule 12D-9.019(1)(a), F.A.C.

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

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

35  
36       Upon request of a party, the Board clerk shall consult with the petitioner and the  
37       property appraiser or tax collector to ensure that, within the Board clerk's judgment, an  
38       adequate amount of time is provided for presenting and considering evidence. See Rule  
39       12D-9.019(1)(c), F.A.C.

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

45  
46       Rule 12D-9.019(1)(e), F.A.C., provides that, in those counties that use special

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

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

16  
17 ~~Note: Legislation enacted in 2018, effective July 1, 2018, provides for administrative~~  
18 ~~reviews of denials of tax abatements for property damaged or destroyed by specific~~  
19 ~~hurricanes in either 2016 or 2017. Since such abatements involve calculations based on~~  
20 ~~specific information from these prior years, these administrative reviews are~~  
21 ~~retrospective and are not connected to the process referenced above in Rule 12D-~~  
22 ~~9.019(2), F.A.C. Accordingly, the scheduling of hearings for administrative reviews on~~  
23 ~~denials of such tax abatements are not governed by dates of public hearings on~~  
24 ~~tentative budgets or proposed millage rates. See section 197.318(1)(e), F.S., created by~~  
25 ~~Chapter 2018-118, Sections 14 and 17, Laws of Florida (CS/HB 7087).~~

### **Procedures for Notifying the Parties of the Scheduled Hearing**

26  
27  
28  
29 The Board clerk shall notify each petitioner of the scheduled time of appearance at the  
30 hearing, and shall simultaneously notify the property appraiser or tax collector. See Rule  
31 12D-9.019(1)(a), F.A.C.

32  
33 \* The Board clerk may electronically send this notification to the petitioner, if the  
34 petitioner indicates on his or her petition this means of communication for receiving  
35 notices, materials, and communications. See Rule 12D-9.019(1)(a), F.A.C.

36  
37 The notice of hearing shall be in writing, and shall be delivered by regular or certified  
38 U.S. mail or personal delivery, or in the manner requested by the petitioner on Form  
39 DR-486. See Rule 12D-9.019(3)(a), F.A.C.

40  
41 \* The hearing notice shall be received by the petitioner no less than twenty-five (25)  
42 calendar days prior to the day of the scheduled appearance at the hearing. See Rule  
43 12D-9.019(3)(a), F.A.C.

44  
45 The form for the notice of hearing shall meet the requirements of the Department's rules  
46 and is subject to approval by the Department. See Rule 12D-9.019(3)(a), F.A.C.



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- 1
- 2 \* The Department provides Form DR-481 (Value Adjustment Board – Notice of  
3 Hearing) as a format for the hearing notice.
- 4
- 5 \* This form is available on the Department’s website at the following link:  
6 <http://floridarevenue.com/property/Pages/Forms.aspx>  
7
- 8 \* A current and up-to-date form must be used.  
9
- 10 Under Rule 12D-9.019(3)(b), F.A.C., the hearing notice shall include the following  
11 elements:
- 12
- 13 1. The parcel number, account number or legal address of all properties being heard at  
14 the scheduled hearing;
- 15
- 16 2. The type of hearing scheduled;
- 17
- 18 3. The date and time of the scheduled hearing; however, if the petition has been  
19 scheduled to be heard within a block of time, the beginning and ending of that block  
20 of time shall be indicated on the notice;
- 21
- 22 4. The time reserved, or instructions on how to obtain this information;
- 23
- 24 5. The location of the hearing, including the hearing room number if known, together  
25 with Board clerk contact information including office address and telephone number,  
26 for petitioners to request assistance in finding hearing rooms;
- 27
- 28 6. Instructions on how to obtain a list of the potential special magistrates for the type of  
29 petition in question;
- 30
- 31 7. A statement of the petitioner’s right to participate in the exchange of evidence with  
32 the property appraiser;
- 33
- 34 8. A statement that the petitioner has the right to reschedule the hearing a single time  
35 for good cause as defined in Section 194.032(2)(a), F.S.;
- 36
- 37 9. A statement that Section 194.032(2)(a), F.S., defines “good cause” as  
38 circumstances beyond the control of the person seeking to reschedule the hearing  
39 which reasonably prevent the party from having adequate representation at the  
40 hearing;
- 41
- 42 10. Instructions on bringing copies of evidence;
- 43
- 44 11. Any information necessary to comply with federal or state disability or accessibility  
45 acts; and  
46

1 12. Information regarding where the petitioner may obtain a copy of the uniform rules  
2 of procedure.  
3  
4

5 **Procedures for Rescheduling Hearings**

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

10  
11 Rule 12D-9.019(4) further provides the following:  
12

- 13 • The Board clerk shall ascertain if the opposing party has been furnished a copy of the  
14 request, and if not, shall furnish the request to the opposing party. The Board clerk  
15 shall promptly forward the reschedule request to the Board or a Board designee to  
16 make a determination as to good cause; for this determination, the Board designee  
17 includes the Board clerk, Board legal counsel, or a special magistrate.  
18
- 19 • The Board or Board designee shall grant the hearing reschedule for any request that  
20 qualifies under Section 194.032(2)(a), F.S. The Board or Board designee may act  
21 upon the request based on its face and whether it meets the provisions for good  
22 cause on its face.  
23
- 24 • If the Board or a Board designee determines that the request does not show good  
25 cause, the request will be denied and the Board may proceed with the hearing as  
26 scheduled.  
27
- 28 • If the Board or a Board designee determines that the request demonstrates good  
29 cause, the request will be granted.  
30
- 31 • Requests to reschedule shall be processed without delay and the processing shall be  
32 accelerated where necessary to ensure, if possible, that the parties are provided  
33 notice of the determination before the original hearing time.  
34
- 35 • The Board clerk shall give prompt notice to the parties of the determination as to  
36 good cause. Form DR-485WCN, Value Adjustment Board – Clerk’s Notice, is  
37 designated and may be used for this purpose. Form DR-485WCN is adopted and  
38 incorporated by reference in Rule 12D-16.002, F.A.C.  
39
- 40 • If good cause is found, the clerk shall give immediate notice of cancellation of the  
41 hearing and shall proceed as provided in paragraph (h).  
42
- 43 • The clerk must receive any notice of conflict dates submitted by a party before notice  
44 of a rescheduled hearing is sent to both parties or before expiration of any period  
45 allowed by the clerk or Board to both parties for such submittal.  
46

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- 1 • The clerk must reschedule considering conflict dates received and should  
2 accommodate a notice of conflict dates when any associated delay will not be  
3 prejudicial to the Board's performance of its functions in the taxing process.  
4
- 5 • The Board clerk is responsible for notifying the parties of any rescheduling and will  
6 issue a notice of hearing with the new hearing date which shall, if possible, be the  
7 earliest date that is convenient for all parties.  
8
- 9 • When rescheduling hearings under this rule, if the parties are unable to agree on an  
10 earlier date, the Board clerk is authorized to schedule the hearing and send a notice  
11 of such hearing by regular or certified U.S. mail or personal delivery, or in the manner  
12 requested by the petitioner on the petition Form DR-486, so that the notice shall be  
13 received by the petitioner no less than fifteen (15) calendar days prior to the day of  
14 such scheduled appearance, unless this notice is waived by both parties.  
15
- 16 • The Board clerk is authorized to inquire if a party wants their evidence considered in  
17 the event of their absence from the hearing.  
18
- 19 • The clerk is authorized to ask the parties if they will waive the 15 days' notice for  
20 rescheduled hearings; however, the parties are not required to do so.  
21
- 22 • A party must not assume the request to reschedule has been granted until notified by  
23 the clerk.  
24

25 Rule 12D-9.019(5), F.A.C., provides that if a hearing is rescheduled by a party, the  
26 Board clerk must notify the petitioner of the rescheduled time in the manner referenced  
27 in Rule 12D-9.019(3), F.A.C., so that the notice shall be received no less than fifteen  
28 (15) calendar days prior to the day of such rescheduled appearance, unless this notice  
29 is waived by both parties.  
30

31

32 \* Form DR-485WCN is designated by the Department and may be used for giving this  
33 notice.  
34

35 \* This form is available on the Department's website at the following link:  
36 <http://floridarevenue.com/property/Pages/Forms.aspx>  
37

38 \* A current and up-to-date form must be used.  
39

40 If a hearing is rescheduled, the deadlines for the exchange of evidence shall be  
41 computed from the new hearing date, if time permits. See Rule 12D-9.019(6), F.A.C.  
42

43 If a petitioner's hearing does not commence as scheduled, the Board clerk is authorized  
44 to reschedule a petition. See Rule 12D-9.019(7)(a), F.A.C.  
45

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- 1 \* In no event shall a petitioner be required to wait more than a reasonable time after  
2 the scheduled time to be heard or, if the petition has been scheduled to be heard  
3 within a block of time, after the beginning of the block of time. A reasonable time  
4 must not exceed two hours. See Rule 12D-9.019(7)(b), F.A.C.  
5
- 6 \* The Board clerk is authorized to find that a reasonable time, not to exceed two  
7 hours, has elapsed based on other commitments, appointments, or hearings of the  
8 petitioner, lateness in the day, and other hearings waiting to be heard earlier than  
9 the petitioner's hearing with the Board or special magistrate. See Rule 12D-  
10 9.019(7)(b), F.A.C.  
11
- 12 \* If his or her petition has not been heard within a reasonable time (not to exceed two  
13 hours), the petitioner may request to be heard immediately. See Rule 12D-9.019(7)(b),  
14 F.A.C.  
15
- 16 \* If the Board clerk finds that a reasonable time has elapsed and petitioner is not  
17 heard, the Board clerk shall reschedule the petitioner's hearing. See Rule 12D-  
18 9.019(7)(b), F.A.C.  
19
- 20 \* A rescheduling of a hearing under Rule 12D-9.019(7), F.A.C., is not a request by a  
21 party to reschedule a hearing for good cause under Rule 12D-9.019(4), F.A.C. See  
22 Rule 12D-9.019(7)(c), F.A.C.  
23
- 24 \* A petitioner is not required to wait any length of time as a prerequisite to filing an  
25 action in circuit court. See Rule 12D-9.019(7)(d), F.A.C.  
26

27 More information on rescheduling hearings is contained in the following section titled  
28 "Procedures for the Exchange of Evidence."  
29  
30

### **Procedures for the Exchange of Evidence**

32 Section 194.011(4)(a), F.S., and Rule 12D-9.020(1)(a)1., F.A.C., provide that, at least  
33 fifteen (15) days before a petition hearing, the petitioner shall provide to the property  
34 appraiser a list of evidence to be presented at the hearing, a summary of evidence to be  
35 presented by witnesses, and copies of all documentation to be presented at the hearing.  
36

- 37 \* To calculate the fifteen (15) days, the petitioner shall use calendar days and shall  
38 not include the day of the hearing in the calculation, and shall count backwards from  
39 the day of the hearing. The last day of the period shall be included unless it is a  
40 Saturday, Sunday, or legal holiday, in which event the period shall run until the end  
41 of the next previous day that is neither a Saturday, Sunday, or legal holiday. See  
42 Rule 12D-9.020(1)(a)2., F.A.C.  
43
- 44 \* The summary of evidence to be presented by witnesses for the petitioner shall be  
45 sufficiently detailed as to reasonably inform a party of the general subject matter of

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

3  
4 \* However, Florida Statutes do not provide for exclusion of petitioner's evidence or  
5 other penalty for a case where a petitioner does not give evidence as provided in  
6 section 194.011(4)(a), F.S.

7  
8 \* Article I, Section 18, of the Florida Constitution, prohibits the imposition of any  
9 penalty except as provided by law.

10  
11 \* A petitioner's noncompliance with section 194.011(4)(a), F.S., does not affect the  
12 petitioner's right to receive a copy of the current property record card from the  
13 property appraiser as described in section 194.032(2)(a), F.S. See Rule 12D-  
14 9.020(1)(b), F.A.C.

15  
16 \* A petitioner's noncompliance with Rule 12D-9.020(1)(a), F.A.C., does not authorize  
17 a Board or special magistrate to exclude the petitioner's evidence. See Rule 12D-  
18 9.020(1)(c), F.A.C.

19  
20 Thus, if a petitioner does not comply with section 194.011(4)(a), F.S., the petitioner may  
21 still present evidence and the Board or the special magistrate may accept such  
22 evidence for consideration, unless the provisions of 194.034(1)(h), F.S., apply.

23  
24 Under section 194.034(1)(h), F.S., if the property appraiser asks in writing for specific  
25 evidence before the hearing in connection with a filed petition and the petitioner has this  
26 evidence and knowingly refuses to provide it to the property appraiser a reasonable  
27 time before the hearing, the evidence cannot be presented by the petitioner or accepted  
28 for consideration by the Board or special magistrate. See Rule 12D-9.025(1)(c), F.A.C.

29  
30 \* Reasonableness shall be determined by whether the material can be reviewed,  
31 investigated, and responded to or rebutted in the time frame remaining before the  
32 hearing. See Rule 12D-9.020(1)(c), F.A.C.

33  
34 \* These requirements are more specifically described in Rules 12D-9.020(8) and 12D-  
35 9.025(4)(a) and (f), F.A.C.

36  
37 If the property appraiser receives the petitioner's documentation as described in Rule  
38 12D-9.020 (1)(a), F.A.C., and if requested in writing by the petitioner, the property  
39 appraiser shall, no later than seven (7) days before the hearing, provide to the petitioner  
40 a list of evidence to be presented at the hearing, a summary of evidence to be  
41 presented by witnesses, and copies of all documentation to be presented by the  
42 property appraiser at the hearing. See Rule 12D-9.020(2)(a), F.A.C.

43  
44 \* There is no specific form or format required for the petitioner's written request. See  
45 Rule 12D-9.020(2)(a), F.A.C.

46

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- 1 \* The property appraiser's evidence list must contain the current property record card.  
2 See Rule 12D-9.020(2)(a), F.A.C.  
3
- 4 \* To calculate the seven (7) days, the property appraiser shall use calendar days and  
5 shall not include the day of the hearing in the calculation, and shall count backwards  
6 from the day of the hearing. The last day of the period so computed shall be  
7 included unless it is a Saturday, Sunday, or legal holiday, in which event the period  
8 shall run until the end of the next previous day which is neither a Saturday, Sunday,  
9 or legal holiday. See Rule 12D-9.020(2)(b), F.A.C.  
10
- 11 \* The summary of evidence to be presented by witnesses for the property appraiser  
12 shall be sufficiently detailed as to reasonably inform a party of the general subject  
13 matter of the witness' testimony, and the name and address of the witness. See Rule  
14 12D-9.020(5), F.A.C.  
15
- 16 If the petitioner does not provide the information to the property appraiser at least fifteen  
17 (15) days prior to the hearing as described in Rule 12D-9.020(1)(a), F.A.C., the property  
18 appraiser need not provide the information to the petitioner as described in Rule 12D-  
19 9.020(2), F.A.C. See Rule 12D-9.020(3)(a), F.A.C.  
20
- 21 If the property appraiser does not provide the information to the petitioner within the  
22 time required by Rule 12D-9.020(2), F.A.C., the hearing shall be rescheduled to allow  
23 the petitioner additional time to review the property appraiser's evidence. See Rule 12D-  
24 9.020(3)(b), F.A.C.  
25
- 26 By agreement of the parties, the evidence exchanged under Rule 12D-9.020, F.A.C.,  
27 shall be delivered by regular or certified U.S. mail, personal delivery, overnight mail, fax  
28 or email. See Rule 12D-9.020(4), F.A.C.  
29
- 30 \* The petitioner and property appraiser may agree to a different timing and method of  
31 exchange. See Rule 12D-9.020(4), F.A.C.  
32
- 33 \* "Provided" means received by the party not later than the time frame provided in this  
34 rule section. See Rule 12D-9.020(4), F.A.C.  
35
- 36 \* If either party does not designate a desired manner for receiving information in the  
37 evidence exchange, the information shall be provided by U.S. mail. See Rule 12D-  
38 9.020(4), F.A.C.  
39
- 40 \* The property appraiser shall provide the information at the address listed on the  
41 petition form for the petitioner. See Rule 12D-9.020(4), F.A.C.  
42
- 43 A property appraiser shall not use at a hearing evidence that was not supplied to the  
44 petitioner as required. See Rule 12D-9.020(7), F.A.C.  
45

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1 \* The remedy for such noncompliance shall be a rescheduling of the hearing to allow  
2 the petitioner an opportunity to review the information of the property appraiser. See  
3 Rule 12D-9.020(7), F.A.C.  
4

5 No petitioner may present for consideration, nor may a Board or special magistrate  
6 accept for consideration, testimony or other evidentiary materials that were specifically  
7 requested of the petitioner in writing by the property appraiser in connection with a filed  
8 petition, of which the petitioner had knowledge and denied to the property appraiser.  
9 See Rule 12D-9.020(8), F.A.C.  
10

11 \* Such evidentiary materials shall be considered timely if provided to the property  
12 appraiser no later than fifteen (15) days before the hearing in accordance with the  
13 exchange of evidence rules in this section. See Rule 12D-9.020(8), F.A.C.  
14

15 \* If provided to the property appraiser less than fifteen (15) days before the hearing,  
16 such materials shall be considered timely if the Board or special magistrate  
17 determines the materials were provided a reasonable time before the hearing, as  
18 described in paragraph 12D-9.025(4)(f), F.A.C. See Rule 12D-9.020(8), F.A.C.  
19

20 \* A petitioner's ability to introduce the evidence, requested of the petitioner in writing  
21 by the property appraiser, is lost if not provided to the property appraiser as  
22 described in Rule 12D-9.020(8), F.A.C.  
23

24 \* This provision does not preclude rebuttal evidence that was not specifically  
25 requested of the petitioner by the property appraiser. See Rule 12D-9.020(8), F.A.C.  
26

27 As the trier of fact, the Board or special magistrate may independently rule on the  
28 admissibility and use of evidence. See Rule 12D-9.020(9), F.A.C.  
29

30 \* If the Board or special magistrate has any questions relating to the admissibility and  
31 use of evidence, the Board or special magistrate should consult with the Board legal  
32 counsel. See Rule 12D-9.020(9), F.A.C.  
33

34 \* The basis for any ruling on admissibility of evidence must be reflected in the record.  
35 See Rule 12D-9.020(9), F.A.C.  
36  
37

### **Petitions Withdrawn, Settled, or Acknowledged as Correct**

39 A petitioner may withdraw a petition prior to the scheduled hearing. See Rule 12D-  
40 9.021(1), F.A.C.  
41

42 Form DR-485WI is prescribed by the Department for such purpose; however, other  
43 written or electronic means may be used. See Rule 12D-9.021(1), F.A.C.  
44

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

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1  
2 \* If the Department's form is used, a current and up-to-date version of the form must  
3 be used.

4  
5 Under Rule 12D-9.021(1), F.A.C., Form DR-485WI shall indicate the reason for the  
6 withdrawal as one of the following:

- 7  
8 1. Petitioner agrees with the determination of the property appraiser or tax collector;  
9  
10 2. Petitioner and property appraiser or tax collector have reached a settlement of the  
11 issues;  
12  
13 3. Petitioner does not agree with the decision or assessment of the property appraiser  
14 or tax collector but no longer wishes to pursue a remedy through the value  
15 adjustment board process; or  
16  
17 4. Other specified reason.

18  
19 The Board clerk shall cancel the hearing upon receiving a notice of withdrawal from the  
20 petitioner and there shall be no further proceeding on the matter. See Rule 12D-9.021(2),  
21 F.A.C.

22  
23 If a property appraiser or tax collector agrees with a petition challenging a decision to  
24 deny an exemption, classification, portability assessment difference transfer, or deferral,  
25 the property appraiser or tax collector shall:

- 26  
27 1. Issue the petitioner a notice granting said exemption, classification, portability  
28 assessment difference transfer, or deferral; and  
29  
30 2. File with the Board clerk a notice that the petition was acknowledged as correct.

31  
32 \* The Board clerk shall cancel the hearing upon receiving the notice of  
33 acknowledgment and there shall be no further proceeding on the matter  
34 acknowledged as correct. See Rule 12D-9.021(3), F.A.C.

35  
36 If parties do not file a notice of withdrawal or notice of acknowledgment but indicate the  
37 same at the hearing, the Board or special magistrate shall so state on the hearing  
38 record and shall not proceed with the hearing and shall not issue a decision. See Rule  
39 12D-9.021(4), F.A.C.

40  
41 \* If a petition is withdrawn or acknowledged as correct under Rule 12D-9.021(1), (2),  
42 or (3), F.A.C., or settlement is reached and filed by the parties, at any time before a  
43 recommended decision or final Board decision is issued, the Board or special  
44 magistrate need not issue such decision. See Rule 12D-9.021(4), F.A.C.

45



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

3  
4 \* Settled petitions shall include those acknowledged as correct by the property  
5 appraiser or tax collector. See Rule 12D-9.021(4), F.A.C.

6  
7 For all withdrawn or settled petitions, a special magistrate shall not produce a  
8 recommended decision and the Board shall not produce a final decision. See Rule 12D-  
9 9.021(5), F.A.C.

### 10 11 12 **Non-Appearance and Summary Disposition of Petitions**

13 NOTE: The procedures in this training section do not apply to hearings on portability  
14 that are held in the county where the previous homestead was located when that county  
15 is different from the county where the new homestead is located. See Rule 12D-  
16 9.028(6)(d), F.A.C.

17  
18 \* In such cases, the petitioner is not required to appear at the hearing in the county  
19 where the previous homestead was located. See Rule 12D-9.028(6)(d), F.A.C.

20  
21 \* See Module 10 for information on petitions on assessment difference transfers  
22 (portability).

23  
24 Except for portability hearings as described above, when a petitioner does not appear  
25 by the commencement of a scheduled hearing and the petitioner has not indicated a  
26 desire to have their petition heard without their attendance and a good cause request is  
27 not pending, the Board or the special magistrate shall:

- 28  
29 1. Not commence or proceed with the hearing; and  
30  
31 2. Produce a decision or recommended decision as described below and in Rule 12D-  
32 9.021(8), F.A.C. See Rule 12D-9.021(6), F.A.C.

33  
34 If the petitioner makes a good cause request before the decision or recommended  
35 decision is issued, the Board or Board designee shall rule on the good cause request  
36 before determining that:

- 37  
38 1. The decision or recommended decision should be set aside and the hearing should  
39 be rescheduled; or  
40  
41 2. The Board or special magistrate should issue the decision or recommended  
42 decision. See Rule 12D-9.021(6), F.A.C.

43  
44 When a petitioner does not appear by the commencement of a scheduled hearing but a  
45 good cause request is pending, the Board or Board designee shall rule on the good  
46 cause request before determining that:

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- 1
- 2 1. The hearing should be rescheduled; or
- 3
- 4 2. The Board or special magistrate should issue a decision or recommended decision.
- 5 See Rule 12D-9.021(7), F.A.C.
- 6
- 7 \* If the Board or Board designee finds good cause for the petitioner's failure to appear,
- 8 the Board clerk shall reschedule the hearing. See Rule 12D-9.021(7)(a), F.A.C.
- 9
- 10 \* If the Board or Board designee does not find good cause for the petitioner's failure to
- 11 appear, the Board or special magistrate shall issue a decision or recommended
- 12 decision. See Rule 12D-9.021(7)(b), F.A.C.
- 13

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

- 16
- 17 1. A finding of fact that the petitioner did not appear at the hearing and did not state
- 18 good cause; and
- 19
- 20 2. A conclusion of law that the relief is denied and the decision is being issued in order
- 21 that any right the petitioner may have to bring an action in circuit court is not
- 22 impaired. See Rule 12D-9.021(8), F.A.C.
- 23

### 24 **Legislation Affecting Certain Board Petitions**

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

- 26
- 27
- 28 \* Pay non-ad valorem assessments and a specified amount of the taxes before the
- 29 later of April 1 or the delinquency date of the year after the taxes were assessed;
- 30 and
- 31
- 32 \* Pay a penalty if the good faith payment is grossly disproportionate to the amount of
- 33 tax found to be due and the taxpayer's admission was not made in good faith.
- 34

35 See sections 194.014, 197.162, and 197.333, F.S.

36

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

39

40 Chapter 2016-128, Section 9, Laws of Florida, effective July 1, 2016, changes the  
41 interest rate for disputed property tax assessments from 12 percent per year to an  
42 annual percentage rate equal to the bank prime loan rate as the Board of Governors of  
43 the Federal Reserve System determines on July 1 of the tax year or the next business  
44 day if July 1 is a Saturday, Sunday, or legal holiday. Also, each taxing authority will  
45 proportionately fund interest on an overpayment related to a petition. See Section  
46 194.014(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.  
29  
30

### **Procedures for Managing Time Needed for Hearings**

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

## 2021 Value Adjustment Board Training - Module 4

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

## 2021 Value Adjustment Board Training - Module 4

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.

### **Procedures for Asking Questions During the Hearing**

10  
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.

### **Procedures for Collecting and Presenting Additional Evidence**

29  
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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46

The Board clerk shall concurrently provide, to the petitioner and the property appraiser, a copy of the written remand decision from the Board or special magistrate. See Rule 12D-9.029(7), F.A.C.

\* The petitioner's copy of the written remand decision shall be sent by regular or certified U.S. mail, or by personal delivery, or in the manner requested by the taxpayer on the petition. See Rule 12D-9.029(7), F.A.C.

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

\* The property appraiser or his or her staff shall not have, directly or indirectly, any ex parte communication with the Board or special magistrate regarding the remanded assessment. See Rule 12D-9.029(8)(b), F.A.C.

Immediately after receipt of the written remand review from the property appraiser, the Board clerk shall send a copy of the written remand review to the petitioner by regular or certified U.S. mail or by personal delivery, or in the manner requested by the petitioner on the petition, and shall send a copy to the Board or special magistrate. See Rule 12D-9.029(9)(a), F.A.C.

\* The Board clerk shall retain, as part of the petition file, the property appraiser's written remand review. See Rule 12D-9.029(9)(a), F.A.C.

\* Together with the petitioner's copy of the written remand review, the Board clerk shall send to the petitioner a copy of Rule 12D-9.029(9), F.A.C. See Rule 12D-9.029(9)(a), F.A.C.

The Board clerk shall schedule a continuation hearing if the petitioner notifies the Board clerk, within 25 days of the date the Board clerk sends the written remand review, that the results of the property appraiser's written remand review are unacceptable to the petitioner and that the petitioner requests a further hearing on the petition. See Rule 12D-9.029(9)(b), F.A.C.

\* The Board clerk shall send the notice of hearing so that it will be received by the petitioner no less than twenty-five (25) calendar days prior to the day of the scheduled continuation hearing, as described in Rule 12D-9.019(3), F.A.C. See Rule 12D-9.029(9)(b), F.A.C.

When a petitioner does not notify the Board clerk that the results of the property appraiser's written remand review are unacceptable to the petitioner and does not request a continuation hearing, or if the petitioner waives a continuation hearing, the Board or special magistrate shall issue a decision or recommended decision. See Rule 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



## 2021 Value Adjustment Board Training - Module 5

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

## 2021 Value Adjustment Board Training - Module 5

- 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.

## 2021 Value Adjustment Board Training - Module 5

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

## 2021 Value Adjustment Board Training - Module 5

- 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

## 2021 Value Adjustment Board Training - Module 5

- 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

## 2021 Value Adjustment Board Training - Module 5

### 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

## 2021 Value Adjustment Board Training - Module 5

### 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

## 2021 Value Adjustment Board Training - Module 5

- 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



## 2021 Value Adjustment Board Training - Module 5

- 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

**Training Module 6 addresses the following topics:**

- Statutory Law Beginning in 2009 (See HB 521)
- ~~Overview of Appraisal Development~~
- Standard of Proof for Administrative Reviews
- Scope of Authority for Administrative Reviews
- Legal Limitations on Administrative Reviews
- ~~The Florida Legal Provisions on the~~ Real Property Appraisal Guidelines
- Florida Information on Appraisal Development
- The Eight Factors of Just Valuation in Section 193.011, F.S.
- ~~Proper Consideration of the Just Valuation Factors~~
- 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
- ~~Homestead Residential Improvement Uninhabitable Due to Hurricane Damage~~
- ~~Assessment of Multiple Parcel Buildings~~
- ~~(NEW) Appraisal by Special Magistrate May Not Be Submitted as Evidence~~

**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

## 2021~~0~~ Value Adjustment Board Training - Module 6

- 1 • Identify legal provisions that represent limitations on the discretion of property
- 2 appraisers
- 3 • Recognize the four components of the definition of personal property
- 4 • Distinguish between appraisal development and administrative reviews
- 5 • Identify the effective date of administrative review and the real property interest to be
- 6 reviewed
- 7 • Recognize and apply the scope of authority for administrative reviews
- 8 • Identify the items that a Board or special magistrate may consider in addition to
- 9 admitted evidence
- 10 • Identify the eight factors of just valuation in Section 193.011, F.S.
- 11 • Recognize the legal standards for consideration of the just valuation factors
- 12 • Identify the applicable standard of proof, its definition, and how it is applied
- 13 • Identify standards of proof that do NOT apply in administrative reviews
- 14 • Recognize that a petitioner is NOT required to present an opinion of value
- 15 • Understand the order of presentation of evidence
- 16 • Identify and apply the steps for evaluating evidence in administrative reviews
- 17 • Recognize and apply the provisions for ruling on the admissibility of evidence
- 18 • Identify and apply the definitions of relevant evidence and credible evidence
- 19 • Recognize and apply the standards for determining the sufficiency of evidence
- 20 • Identify types of information that are NOT sufficient evidence for establishing a
- 21 presumption of correctness
- 22 • Recognize the requirements for establishing a presumption of correctness
- 23 • Recognize the requirements for overcoming a presumption of correctness
- 24 • Identify the alternative actions required when a presumption of correctness was not
- 25 established, or was established but later was overcome
- 26 • Identify and apply the elements of the definition of competent substantial evidence
- 27 for establishing a revised assessment
- 28 • Recognize the conditions under which a Board or special magistrate is required to
- 29 establish a revised just value
- 30 • Identify legal limitations on administrative reviews
- 31 • Apply the sequence of general procedural steps for administrative reviews of just
- 32 valuations
- 33 • Identify when the Board or special magistrate is required or is NOT required to make
- 34 determinations such as findings, conclusions, or decisions
- 35 • Recognize the chronology and operation of the eighth criterion for real property
- 36 under Florida law
- 37 • Recognize that the eighth criterion must be properly considered in administrative
- 38 reviews of just valuations of real property, regardless of the appraisal approach or
- 39 technique used and whether an actual sale of the property has occurred
- 40 • Apply procedures for properly considering the eighth criterion in administrative
- 41 reviews of real property
- 42

1  
2 **Statutory Law Beginning in 2009 (See HB 521)**

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

6  
7 The complete text of this legislation is presented following:

8  
9 *Be It Enacted by the Legislature of the State of Florida:*

10  
11 Section 1.

12 *Section 194.301, Florida Statutes, is amended to read:*

13 *194.301 Challenge to ad valorem tax assessment.—*

14  
15 *(1) In any administrative or judicial action in which a taxpayer challenges an ad valorem*  
16 *tax assessment of value, the property appraiser's assessment is presumed correct if the*  
17 *appraiser proves by a preponderance of the evidence that the assessment was arrived*  
18 *at by complying with s. 193.011, any other applicable statutory requirements relating to*  
19 *classified use values or assessment caps, and professionally accepted appraisal*  
20 *practices, including mass appraisal standards, if appropriate. However, a taxpayer who*  
21 *challenges an assessment is entitled to a determination by the value adjustment board*  
22 *or court of the appropriateness of the appraisal methodology used in making the*  
23 *assessment. The value of property must be determined by an appraisal methodology that*  
24 *complies with the criteria of s. 193.011 and professionally accepted appraisal practices.*  
25 *The provisions of this subsection preempt any prior case law that is inconsistent with this*  
26 *subsection.*

27  
28 *(2) In an administrative or judicial action in which an ad valorem tax assessment is*  
29 *challenged, the burden of proof is on the party initiating the challenge.*

30  
31 *(a) If the challenge is to the assessed value of the property, the party initiating the*  
32 *challenge has the burden of proving by a preponderance of the evidence that the*  
33 *assessed value:*

34  
35 *1. Does not represent the just value of the property after taking into account any*  
36 *applicable limits on annual increases in the value of the property;*

37  
38 *2. Does not represent the classified use value or fractional value of the property if the*  
39 *property is required to be assessed based on its character or use; or*

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1 3. *Is arbitrarily based on appraisal practices that are different from the appraisal practices*  
2 *generally applied by the property appraiser to comparable property within the same*  
3 *county.*

4  
5 *(b) If the party challenging the assessment satisfies the requirements of paragraph (a),*  
6 *the presumption provided in subsection (1) is overcome and the value adjustment board*  
7 *or the court shall establish the assessment if there is competent, substantial evidence of*  
8 *value in the record which cumulatively meets the criteria of s. 193.011 and professionally*  
9 *accepted appraisal practices. If the record lacks such evidence, the matter must be*  
10 *remanded to the property appraiser with appropriate directions from the value adjustment*  
11 *board or the court, and the property appraiser must comply with those directions.*

12  
13 *(c) If the revised assessment following remand is challenged, the procedures described*  
14 *in this section apply.*

15  
16 *(d) If the challenge is to the classification or exemption status of the property, there is no*  
17 *presumption of correctness and the party initiating the challenge has the burden of*  
18 *proving by a preponderance of the evidence that the classification or exempt status*  
19 *assigned to the property is incorrect.*

20  
21 Section 2.

22 *(1) It is the express intent of the Legislature that a taxpayer shall never have the burden*  
23 *of proving that the property appraiser's assessment is not supported by any reasonable*  
24 *hypothesis of a legal assessment. All cases establishing the every-reasonable-*  
25 *hypothesis standard were expressly rejected by the Legislature on the adoption of chapter*  
26 *97-85, Laws of Florida. It is the further intent of the Legislature that any cases published*  
27 *since 1997 citing the every-reasonable-hypothesis standard are expressly rejected to the*  
28 *extent that they are interpretative of legislative intent.*

29  
30 *(2) This section is intended to clarify existing law and apply retroactively.*

31  
32 Section 3.

33 *This act shall take effect upon becoming a law and shall first apply to assessments in*  
34 *2009.*

35 *Approved by the Governor June 4, 2009.*

36 *Filed in Office Secretary of State June 4, 2009.*

37 *Ch. 2009-121 LAWS OF FLORIDA Ch. 2009-121*

38  
39 *This law applies to the administrative review of assessments beginning with 2009*  
40 *assessments.*

41

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1 \* Procedural steps for implementing this legislation for administrative reviews of just  
2 valuations are presented later in this training module.  
3

4 Board attorneys and special magistrates are responsible for ensuring that this important  
5 legislation is implemented for all administrative reviews of assessments, ~~starting in~~  
6 ~~2009.~~  
7

8 This 2009 legislation lowered the standard of proof for assessment challenges, greatly  
9 increased the level of diligence for developing and reporting just valuations, and added  
10 the following four new determinative standards for developing, reporting, and reviewing  
11 just valuations: 1) compliance with professionally accepted appraisal practices; 2)  
12 avoidance of arbitrarily different appraisal practices within groups of comparable  
13 property within the same county; 3) avoidance of superseded case law; and 4) correct  
14 application of an appropriate appraisal methodology. These changes are explained in a  
15 following section titled "The Seven Overarching Standards for Valid Just Valuations."  
16

17 ~~This law changed the standard of review for assessments, and Boards and special~~  
18 ~~magistrates must be familiar with the law to ensure its implementation.~~  
19

20 ~~Where appropriate, key points from this statute are presented in this and other modules~~  
21 ~~of this training. However, users of this training are advised to obtain a copy of this~~  
22 ~~statute and review it carefully to understand all of its provisions.~~  
23

24 The law now provides a lower standard of proof, called "preponderance of the  
25 evidence," for determining whether the assessment is incorrect.  
26

27 \* "Preponderance of the evidence" is a standard (level) of proof that means "greater  
28 weight of the evidence" or "more likely than not."  
29

30 In determining whether the assessment is incorrect, Boards and special magistrates  
31 must not use any standard of proof other than the preponderance of the evidence  
32 standard, as provided in Section 194.301, F.S., as amended by Chapter 2009-121,  
33 Laws of Florida (House Bill 521).  
34

35 Higher standards of proof no longer apply. The higher standard of proof called "clear  
36 and convincing evidence" no longer applies in the administrative review of assessments  
37 and must not be used by Boards or special magistrates. See Section 194.301, F.S., as  
38 amended by Chapter 2009-121, Laws of Florida (House Bill 521).  
39

40 *"It is the express intent of the Legislature that a taxpayer shall never have the burden of*  
41 *proving that the property appraiser's assessment is not supported by any reasonable*

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1 *hypothesis of a legal assessment.*” See Subsection 194.3015(1), F.S., as created by Chapter  
2 2009-121, Laws of Florida (House Bill 521).

3  
4 ~~The current statute provides the following: “The provisions of this subsection preempt  
5 any prior case law that is inconsistent with this subsection.” See Subsection 194.301(1),  
6 F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).~~

7  
8 ~~References to Florida court decisions are presented in this training. Generally, these  
9 court decisions predate this current statutory law. This current statutory law supersedes  
10 these decisions to the extent these decisions conflict with it.~~

11  
12 ~~Thus, the information from these court decisions, as presented in this training, has been  
13 modified where appropriate for consistency with the 2009 changes in the statute.~~

14  
15 ~~For example, court decisions recognize that property appraisers have discretion, which  
16 is limited by other provisions of law, in weighing just valuation factors and in selecting  
17 an appraisal methodology.~~

18  
19 ~~\* The current statute contains an additional requirement that the appraisal  
20 methodology used in making the assessment must comply with “professionally  
21 accepted appraisal practices.”~~

22  
23 ~~\* This requirement represents an additional statutory limitation on the property  
24 appraiser’s discretion.~~

25  
26 ~~Therefore, where appropriate in this training, the requirement on “professionally  
27 accepted appraisal practices” has been added to modify the information from prior court  
28 decisions for consistency with the current statutory law.~~

29  
30 ~~\* This training module includes references to this current statutory law where  
31 appropriate.~~

32  
33 ~~This training is intended to contain information that is consistent with the current  
34 statutory provisions in Sections 194.301 and 194.3015, F.S., as amended by Chapter  
35 2009-121, Laws of Florida (House Bill 521).~~

36  
37 ~~An overall summary of the provisions of this current law is presented in Module 1 of this  
38 training. Provisions of this current statute are addressed appropriate in other slides in  
39 this module and in other modules of this training.~~

40  
41  
42 **Overview of Appraisal Development**

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1 ~~Appraisal development, or valuation development, is the process of producing an~~  
2 ~~original appraisal (determination of value) using the overall appraisal process.~~

3  
4 ~~In administrative reviews, Boards and special magistrates are not authorized to perform~~  
5 ~~appraisal development and must not perform appraisal development.~~

6  
7 ~~Property appraisers do appraisal development as part of their annual production of~~  
8 ~~assessment rolls. Private sector appraisers also do appraisal development.~~

9  
10 ~~Generally, property appraisers use a professionally accepted methodology called mass~~  
11 ~~appraisal to develop real property just values each year.~~

12  
13 ~~The Florida Real Property Appraisal Guidelines generally describe the mass appraisal~~  
14 ~~development process under Florida law.~~

15  
16 ~~It is implicit in mass appraisal that, even when properly specified and calibrated mass~~  
17 ~~appraisal models are used, some individual value conclusions will not meet standards of~~  
18 ~~reasonableness, consistency, and accuracy.~~

### 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 by the Board or special magistrate  
31 to reach a particular conclusion. See Rule 12D-9.027(5), F.A.C.

32  
33 The standard of proof that applies in administrative reviews is called “preponderance of  
34 the evidence,” which means “greater weight of the evidence.” See Rule 12D-9.027(5),  
35 F.A.C.

36  
37 Also, the Florida Supreme Court has defined “preponderance of the evidence” as  
38 “greater weight of the evidence” or evidence that “more likely than not” tends to prove a  
39 certain proposition. See Gross v. Lyons, 763 So.2d 276 (Fla. 2000).



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1 “Greater weight of the evidence” means the more persuasive and convincing force and  
2 effect of the entire evidence in the case. See Florida Standard Civil Jury Instructions,  
3 approved for publication by the Florida Supreme Court.  
4

5 The Board or special magistrate must determine whether the admitted evidence is  
6 sufficiently relevant and credible to reach the “preponderance of the evidence” standard  
7 of proof.  
8

9 This standard of proof is the scale by which the Board or special magistrate measures  
10 the weight (relevance and credibility) of the admitted evidence in making a  
11 determination.  
12

13 ~~A higher standard of proof called “clear and convincing evidence” no longer applies in~~  
14 ~~the administrative review of assessments and must not be used by Boards or special~~  
15 ~~magistrates. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida~~  
16 ~~(House Bill 521).~~  
17

18 ~~In no case shall the taxpayer be required to prove that the property appraiser’s~~  
19 ~~assessment is not supported by any reasonable hypothesis of a legal assessment. See~~  
20 ~~Subsection 194.3015(1), F.S., as created by Chapter 2009-121, Laws of Florida (House Bill 521).~~  
21  
22

### **Scope of Authority for Administrative Reviews**

24 The administrative review of just valuations is performed by Boards or special  
25 magistrates under Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10, and  
26 12D-16, F.A.C.; and other provisions of Florida law.  
27

28 The administrative review process performed by Boards and special magistrates is  
29 separate and different from the mass appraisal development process performed by  
30 property appraisers.  
31

32 In administrative reviews, Boards and special magistrates are not authorized to perform  
33 appraisal development and must not perform appraisal development.  
34

35 In administrative reviews, Boards and special magistrates are not authorized to perform  
36 any independent factual research into attributes of the subject property or any other  
37 property.  
38

39 Boards and special magistrates must follow the provisions of law on the administrative  
40 review of assessments. See Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10,  
41 and 12D-16, F.A.C.; and other provisions of Florida law.  
42

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1 In establishing revised just values when required by law, Boards and special  
2 magistrates are bound by the same standards and practices as property appraisers.  
3 See Rule 12D-10.003(1), F.A.C., treated favorably in Bystrom v. Equitable Life Assurance  
4 Society, 416 So.2d 1133 (Fla. 3d DCA 1982), and see Section 194.301, F.S., as amended by  
5 Chapter 2009-121, Laws of Florida (House Bill 521).

6  
7 \* However, when observing this requirement, Boards and special magistrates must  
8 act within their scope of authority.

9  
10 The effective date of administrative review is January 1 each year, and the real property  
11 interest to be reviewed is the unencumbered fee simple estate.

12  
13 The Board or special magistrate has no authority to develop original just valuations of  
14 property and may not take the place of the property appraiser, but shall revise the  
15 assessment when required under Florida law. See Rule 12D-10.003(1), F.A.C., and Section  
16 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

17  
18 \* See Simpson v. Merrill, 234 So.2d 350 (Fla. 1970), stating that a court may not take the place  
19 of the property appraiser but may reduce the assessment.

20  
21 \* Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding  
22 that the determination of the weight to be accorded evidence rests upon the trial judge, as  
23 trier of facts, and if competent substantial evidence is introduced demonstrating the  
24 assessment to be erroneous, the judge may reduce that assessment.

25  
26 The Board or special magistrate is required to revise the assessment under the  
27 conditions specified in Section 194.301, F.S., as amended by Chapter 2009-121, Laws  
28 of Florida (House Bill 521). These conditions are described in detail later in this module.

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 \* Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding  
34 that the reviewing judge could arrive at a value that was different from either of the values  
35 presented by the parties when the judge's value was based on competent substantial evidence  
36 in the record.

37  
38 The Board or special magistrate is authorized to make calculations and to make an  
39 adjustment to the property appraiser's value based on competent substantial evidence  
40 of just value in the record. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws  
41 of Florida (House Bill 521), and see Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977),

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1 stating that when the record contains competent substantial evidence of value the court may  
2 make necessary value calculations or adjustments based on such evidence.

3  
4 If the hearing record does not contain competent substantial evidence of just value, the  
5 Board or special magistrate cannot substitute its own independent judgment. See Section  
6 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see  
7 Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977), stating that in the absence of  
8 competent substantial evidence of value the court cannot substitute its own independent  
9 judgment.

10  
11 The Board or special magistrate has no authority to adjust assessments across-the-  
12 board. Their authority to review just valuations is limited to the review of individual  
13 petitions filed. See Spooner v. Askew, 345 So.2d 1055 (Fla. 1976).

14  
15 The Board has the limited function of reviewing and correcting individual assessments  
16 developed by the property appraiser. See Bath Club, Inc. v. Dade County, 394 So.2d 110  
17 (Fla. 1981).

18  
19 The Board has no authority to review, on its own volition, a decision of the property  
20 appraiser to deny an exemption. See Redford v. Department of Revenue, 478 So.2d 808  
21 (Fla. 1985).

22  
23 *“For the purposes of review of a petition, the board may consider assessments among*  
24 *comparable properties within homogeneous areas or neighborhoods.”* See Subsection  
25 194.034(5), F.S.

26  
27 In administrative reviews, Boards and special magistrates are not authorized to consider  
28 any evidence except evidence properly presented by the parties and properly admitted  
29 into the record for consideration. See Rule 12D-9.025(4)(a), F.A.C.

30  
31 In addition to admitted evidence, Boards and special magistrates are authorized to  
32 consider only the following items in administrative reviews:

- 33  
34 1. Legal advice from the Board legal counsel;  
35  
36 2. Information contained or referenced in the Department’s Uniform Policies and  
37 Procedures Manual and Accompanying Documents;  
38  
39 3. Information contained or referenced in the Department’s training for value  
40 adjustment boards and special magistrates; and  
41

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1 4. Professional texts that pertain only to professionally accepted appraisal practices  
2 that are not inconsistent with Florida law.  
3  
4

### 5 **Legal Limitations on Administrative Reviews**

6 No evidence shall be considered by the Board or special magistrate except when  
7 presented during the time scheduled for the petitioner's hearing or at a time when the  
8 petitioner has been given reasonable notice. See Subsection 194.034(1)(g)(e), F.S. Also, see  
9 Rule 12D-9.025(4)(a), F.A.C.

10  
11 Other provisions of law address the responsibilities of petitioners and property  
12 appraisers that may affect the review and consideration of evidence at a hearing.  
13

14 \* The Board or special magistrate must consult with the Board legal counsel on any  
15 questions about the review and consideration of evidence.  
16

17 In administrative reviews, the Board or special magistrate shall not consider the tax  
18 consequences of the valuation of a specific property. See Rule 12D-10.003(1), F.A.C.  
19

20 The Board or special magistrate has no power to grant relief by adjusting the value of a  
21 property on the basis of hardship of a particular taxpayer. See Rule 12D-10.003(1), F.A.C.  
22

23 A just valuation challenge must stand or fall on its own validity, unconnected with the  
24 just value of any prior or subsequent year. See Keith Investments, Inc. v. James, 220 So.2d  
25 695 (Fla. 4th DCA 1969); Also, see Dade County v. Tropical Park, Inc., 251 So.2d 551 (Fla. 3rd  
26 DCA 1971).  
27

28 The prior year's just value is not competent evidence of just value in the current year,  
29 even when there is no evidence showing a change in circumstances between the two  
30 dates of assessment. See Simpson v. Merrill, 234 So.2d 350 (Fla. 1970).  
31

32 An appraisal report shall not be submitted as evidence in a value adjustment board  
33 proceeding in any tax year in which the person who performed the appraisal serves as a  
34 special magistrate to that county value adjustment board for the same tax year.  
35 Accordingly, in that tax year the board and any special magistrate in that county shall  
36 not admit such appraisal report into evidence and shall not consider any such appraisal  
37 report. See Rule 12D-9.025(4)(g), F.A.C.  
38  
39

### 40 **The Florida Legal Provisions on the Real Property Appraisal** 41 **Guidelines**

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1 Below are provisions from Section 195.032, Florida Statutes, describing the Florida  
2 Real Property Appraisal Guidelines.

- 3
- 4 1. *“The standard measures of value shall provide guidelines for the valuation of*  
5 *property and methods for property appraisers to employ in arriving at the just*  
6 *valuation of particular types of property consistent with section 193.011...”*
  - 7
  - 8 2. *“The standard measures of value shall assist the property appraiser in the valuation*  
9 *of property and be deemed prima facie correct, but shall not be deemed to establish*  
10 *the just value of any property.”*

11

12 See Rule 12D-51.003, Florida Administrative Code, for more information on the Florida  
13 Real Property Appraisal Guidelines.

14

15 **NOTICE:**  
16 **The Florida Real Property Appraisal Guidelines are Out-of-Date**

17

18 The Florida Real Property Appraisal Guidelines, developed under sections 195.002,  
19 195.032, and 195.062, F.S., were last revised in 2002 and are now out-of-date due to  
20 changes in law. The 2002 guidelines do NOT reflect the impacts of the landmark 2009  
21 enactments in sections 194.301 and 194.3015. Pertinent to the guidelines, the 2009  
22 legislation greatly increased the level of diligence required for developing and reporting  
23 just valuations and also established four additional, determinative standards for  
24 developing, reporting, and reviewing just valuations. These four additional standards  
25 are: 1) compliance with professionally accepted appraisal practices; 2) avoidance of  
26 arbitrarily different appraisal practices within groups of comparable property within the  
27 same county; 3) avoidance of superseded case law; and 4) correct application of an  
28 appropriate appraisal methodology. The 2002 real property appraisal guidelines cannot  
29 be used as any sort of standard for the property appraiser’s development and reporting  
30 of just valuations or for the VAB’s review of just valuations. Rather, the current  
31 determinative legal standards to be used for just valuation development, reporting, and  
32 review are listed under the seven overarching standards for valid just valuations  
33 presented below herein. Such standards reflect the 2009 enactments involving sections  
34 194.301, 193.011, and 194.3015, F.S.

35

36 More information on these 2009 enactments is presented in a following section titled  
37 “The Seven Overarching Standards for Valid Just Valuations.”

38

39 A copy of the 2002 real property guidelines is available at:  
40 <http://floridarevenue.com/property/Documents/FLrpg.pdf>

1 **Florida Information on Appraisal Development**

2 ~~The Florida Real Property Appraisal Guidelines contain descriptions of appraisal~~  
3 ~~methods that may be used by property appraisers to develop just valuations of real~~  
4 ~~property consistent with Florida law.~~

5  
6 ~~Boards and special magistrates are expected to understand these guidelines for~~  
7 ~~purposes of reviewing challenged assessments.~~

8  
9 ~~A copy of these guidelines is available at the following web address:~~  
10 ~~———<http://floridarevenue.com/property/Documents/FLrpg.pdf>~~

11  
12 ~~The real property guidelines describe the three real property valuation approaches,~~  
13 ~~which are the following: (1) The Cost Less Depreciation Approach; (2) The Sales~~  
14 ~~Comparison Approach; and (3) The Income Capitalization Approach.~~

15  
16 In the context of Florida ad valorem tax law, appraisal development is the act, by an  
17 appraiser, of applying the appraisal process to arrive at valid just valuations.

18  
19 More information on Florida’s standards for appraisal development is in a following  
20 section titled “The Seven Overarching Standards for Valid Just Valuations.”

21  
22  
23 Section 4, Article VII, of the Florida Constitution, requires a just valuation of all property  
24 for ad valorem taxation, with certain conditions.

25  
26 Florida’s constitution has “*delegated to the Legislature the responsibility for deciding the*  
27 *specifics of how that ‘just valuation’ would be secured.*” Sunset Harbour Condominium  
28 Ass’n v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Collier County v. State, 733 So.2d  
29 1012, 1019 (Fla. 1999).

30  
31 ~~The In section 193.011, F.S., the~~ Florida Legislature has effectuated the constitutional  
32 requirement for just valuations by specifying just valuation standards in several statutes,  
33 as explained below in a section titled “The Seven Overarching Standards for Valid Just  
34 Valuations.” ~~the eight factors that must be properly considered in arriving at just~~  
35 ~~valuations of all property.~~

36  
37 Regarding section 193.011, in 1963, the Legislature enacted the initial version of the  
38 first seven just valuation factors, effective January 1, 1964. See Chapter 63-250, Laws of  
39 Florida, creating Section 193.021, F.S., which was re-numbered in 1969 as Section 193.011,  
40 F.S., by Chapter 69-55, Laws of Florida.

41

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1 In 1965, the Florida Supreme Court held that just value was synonymous with fair  
2 market value and defined fair market value as: *“the amount a purchaser willing but not*  
3 *obliged to buy, would pay to one willing but not obliged to sell.”* See Walter v. Schuler, 176  
4 So.2d 81 (Fla. 1965).

5  
6 \* Neither the term “fair market value” nor the term “market value” appears in the  
7 Florida Constitution. The term “just valuation” appears in the constitution once and  
8 the term “just value” appears in the constitution a total of 22 times, all of which terms  
9 appear in Article VII pertaining to the valuation of property for ad valorem taxation.

10  
11 \* NOTE: The eighth just valuation criterion did not exist at the time of Walter v.  
12 Schuler. The Legislature can override decisional law. See Dept. of Environmental  
13 Protection v. Contractpoint Florida Parks, 986 So.2d 1260, 1269 (Fla. 2008).

14  
15 Then, in 1967, the Legislature added the eighth just valuation criterion (net proceeds of  
16 sale) as a new Subsection 193.021(8), F.S. See Chapter 67-167, Laws of Florida, creating  
17 Subsection 193.021(8), F.S., which was re-numbered in 1969 as Subsection 193.011(8), F.S., by  
18 Chapter 69-55, Laws of Florida.

19  
20 Subsection 193.011(8), F.S., generally known as the “eighth criterion,” was last  
21 amended in 1979 and is presented below in its entirety.

22  
23 *“The net proceeds of the sale of the property, as received by the seller, after deduction*  
24 *of all of the usual and reasonable fees and costs of the sale, including the costs and*  
25 *expenses of financing, and allowance for unconventional or atypical terms of financing*  
26 *arrangements. When the net proceeds of the sale of any property are utilized, directly or*  
27 *indirectly, in the determination of just valuation of realty of the sold parcel or any other*  
28 *parcel under the provisions of this section, the property appraiser, for the purposes of*  
29 *such determination, shall exclude any portion of such net proceeds attributable to*  
30 *payments for household furnishings or other items of personal property.”*

31  
32 When the eighth criterion was added in 1967 to the statute containing just valuation  
33 factors, the Legislature apparently provided discretion to property appraisers that would  
34 allow for, but not require, just value to be a number different than before enactment of  
35 the “net proceeds of sale” factor.

36  
37 The rule of statutory interpretation is to assume that the Legislature intended its  
38 amendment to serve a useful purpose. “Likewise, when a statute is amended, it is  
39 presumed that the Legislature intended it to have a meaning different from that  
40 accorded to it before the amendment.” Carlisle v. Game and Freshwater Fish Commission,  
41 354 So.2d 362 (Fla. 1977); see also Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st  
42 DCA 1998).

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1  
2 For many years, Florida property appraisers have interpreted subsection 193.011(8),  
3 F.S., by applying across-the-board, eighth criterion adjustments in arriving at just  
4 valuations of real property.

5  
6 Since its enactment and amendments, this eighth just valuation criterion has been  
7 applied by property appraisers in actual practice to produce a just value for real property  
8 that is generally less than fair market value.

9  
10 In 1984, when reviewing a 1980 assessment, a federal appellate court found that just  
11 value as determined under Subsection 193.011(8), F.S., does not represent full market  
12 value. See Louisville and Nashville Railroad Co. v. Department of Revenue, State of Fla., 736  
13 F.2d 1495 (11th Cir. (Fla.) July 24, 1984).

14  
15 A Florida appellate court stated the following in an example regarding the eighth  
16 criterion: *“Subtracting the \$15,000 (cost of sale) from the \$100,000 selling price leaves  
17 a net value of \$85,000. We find no impropriety in using this approach to valuation.”* See  
18 Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272 (Fla. 4th DCA  
19 1995) review denied 673 So.2d 30 (Fla. 1996).

20  
21 The eighth criterion is addressed in more detail in the last three sections of this module.

22  
23 ~~In 2007, the United States Supreme Court held that appraisal is an “applied science.”~~  
24 ~~See CSX Transportation, Inc. v. Georgia State Board of Equalization, 552 U.S. 9 (2007).~~

25  
26 ~~The following excerpt states that mass appraisal is a combination of science and art,~~  
27 ~~and requires sound judgment. See Fundamentals of Mass Appraisal (Kansas City, MO:~~  
28 ~~International Association of Assessing Officers, 2011), pages 135–136.~~

29  
30 ~~• “Thus, modeling is a combination of the proper application of statistical tools~~  
31 ~~(science) and market experience and sound judgment (art).”~~

32  
33 ~~The following two excerpts describe the context and application of sound appraisal~~  
34 ~~judgment in the appraisal process. See Uniform Appraisal Standards for Federal Land~~  
35 ~~Acquisition 2016 (Appraisal Foundation), pages 204 and 203, respectively.~~

36  
37 ~~• “Appraisers must exercise sound judgment based on known pertinent facts and~~  
38 ~~circumstances, and it is their responsibility to obtain knowledge of all pertinent facts~~  
39 ~~and circumstances that can be acquired with diligent inquiry and search. They must~~  
40 ~~then weigh and consider the relevant facts, exercise sound judgment, and develop~~  
41 ~~an opinion that is completely unbiased by any consideration favoring either the~~  
42 ~~landowner or the government.”~~



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- ~~“Serving this important function requires expertise, diligence, sound judgment, and objectivity...”~~

~~Judgment is not a substitute for appraisal expertise, diligence, or objectivity. Sound appraisal judgment must be exercised in accordance with applicable legal criteria including professionally accepted appraisal practices. See Section 194.301(1), F.S., and Darden Restaurants, Inc. v. Singh, 266 So.3d 228 (Fla. 5th DCA 2019), referring to “professional judgment” in just valuations under 2009 legislation that amended Section 194.301, F.S.~~

~~Note: As indicated following, the property appraiser’s discretion is not unbridled and is limited by provisions of law including Sections 194.301 and 194.3015, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).~~

~~Several Florida court decisions have described the limitations on the property appraiser’s discretion, including the five indicated below:~~

- ~~1. The statute on just valuation factors (now Section 193.011, F.S.) was not intended to give property appraisers unbridled discretion; rather, the statute’s purpose is to require property appraisers to adhere to the constitutional mandate of just valuation. See Walter v. Schuler, 176 So.2d 81 (Fla. 1965); Section 193.011, F.S.; and Chapter 67-167, Laws of Florida, creating Subsection 193.021(8), F.S., which was re-numbered in 1969 as Subsection 193.011(8), F.S., by Chapter 69-55, Laws of Florida.~~
- ~~2. The property appraiser’s discretion is limited by the standard of just valuation and by the statutory criteria for just valuation (now Section 193.011, F.S.). See Keith Investments, Inc. v. James, 220 So.2d 695 (Fla. 4th DCA 1969).~~
- ~~3. The statutory valuation criteria are intended to limit the property appraiser’s discretion and to tie the property appraiser more closely to the uniform constitutional standard of just valuation. See Cassady v. McKinney, 296 So.2d 94 (Fla. 2nd DCA 1974).~~
- ~~4. The property appraiser’s discretion is limited by the constitutional requirement for a just valuation and by statute (Section 193.011, F.S.). See In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006).~~
- ~~5. The property appraiser’s discretion is limited by professionally accepted appraisal practices. See Darden Restaurants, Inc. v. Singh, 266 So.3d 228 (Fla. 5th DCA 2019), citing Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), which requires that the assessment methodology comply with professionally accepted appraisal practices.~~

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1 ~~The property appraiser is required to consider, but is not required to use, all three~~  
2 ~~approaches to value. See Mastroianni v. Barnett Banks, Inc., 664 So.2d 284 (Fla. 1st DCA~~  
3 ~~1995) review denied 673 So.2d 29 (Fla. 1996).~~

4  
5 ~~\*—Note: However, a presumption of correctness for the assessment will not be~~  
6 ~~established if the property appraiser does not prove by a preponderance of the~~  
7 ~~evidence that the just value was developed in compliance with Section 193.011,~~  
8 ~~F.S., and professionally accepted appraisal practices, including mass appraisal~~  
9 ~~standards, if appropriate.~~

10  
11 ~~The property appraiser's valuation methodology must comply with the criteria in Section~~  
12 ~~193.011, F.S., and professionally accepted appraisal practices. See Section 194.301, F.S.,~~  
13 ~~as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and Section 193.011, F.S.~~

14  
15 Florida law defines real property as land, buildings, fixtures, and all other improvements  
16 to land. See Subsection 192.001(12), F.S.

17  
18 Florida law defines personal property as being divided into the following four categories:  
19 1) household goods, 2) intangible personal property, 3) inventory, and 4) tangible  
20 personal property. See Subsection 192.001(11), F.S.

21  
22 Subsection 193.011(8), F.S., states the following in pertinent part: *"When the net*  
23 *proceeds of the sale of any property are utilized, directly or indirectly, in the*  
24 *determination of just valuation of realty of the sold parcel or any other parcel under the*  
25 *provisions of this section, the property appraiser, for the purposes of such*  
26 *determination, shall exclude any portion of such net proceeds attributable to payments*  
27 *for household furnishings or other items of personal property."*

28  
29 The just value of any personal property must be excluded from just valuations of real  
30 property.

### **The Eight Factors of Just Valuation in Section 193.011, F.S.**

34 ~~After the landmark 2009 legislation, the eight just valuation factors in section 193.011~~  
35 ~~are now incorporated into section 194.301 in three places and must be applied together~~  
36 ~~with the other just valuation standards in sections 194.301 and 194.3015, F.S., and in~~  
37 ~~other applicable law, so that each standard is given lawful meaning.~~

38  
39 Section 193.011, Florida Statutes, provides the following on just valuation.  
40

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1 ***“Factors to consider in deriving just valuation.*** – *In arriving at just valuation as*  
2 *required under s. 4, Art. VII of the State Constitution, the property appraiser shall take*  
3 *into consideration the following factors:*

4  
5 (1) *The present cash value of the property, which is the amount a willing purchaser*  
6 *would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash*  
7 *or the immediate equivalent thereof in a transaction at arm's length;*

8  
9 (2) *The highest and best use to which the property can be expected to be put in the*  
10 *immediate future and the present use of the property, taking into consideration the*  
11 *legally permissible use of the property, including any applicable judicial limitation, local*  
12 *or state land use regulation, or historic preservation ordinance, and any zoning*  
13 *changes, concurrency requirements, and permits necessary to achieve the highest and*  
14 *best use, and considering any moratorium imposed by executive order, law, ordinance,*  
15 *regulation, resolution, or proclamation adopted by any governmental body or agency or*  
16 *the Governor when the moratorium or judicial limitation prohibits or restricts the*  
17 *development or improvement of property as otherwise authorized by applicable law.*  
18 *The applicable governmental body or agency or the Governor shall notify the property*  
19 *appraiser in writing of any executive order, ordinance, regulation, resolution, or*  
20 *proclamation it adopts imposing any such limitation, regulation, or moratorium;*

21  
22 (3) *The location of said property;*

23  
24 (4) *The quantity or size of said property;*

25  
26 (5) *The cost of said property and the present replacement value of any improvements*  
27 *thereon;*

28  
29 (6) *The condition of said property;*

30  
31 (7) *The income from said property; and*

32  
33 (8) *The net proceeds of the sale of the property, as received by the seller, after*  
34 *deduction of all of the usual and reasonable fees and costs of the sale, including the*  
35 *costs and expenses of financing, and allowance for unconventional or a typical terms of*  
36 *financing arrangements. When the net proceeds of the sale of any property are utilized,*  
37 *directly or indirectly, in the determination of just valuation of realty of the sold parcel or*  
38 *any other parcel under the provisions of this section, the property appraiser, for the*  
39 *purposes of such determination, shall exclude any portion of such net proceeds*  
40 *attributable to payments for household furnishings or other items of personal property.”*

1  
2 Section 193.011 is now part of the determinative just valuation standards provided in  
3 sections 194.301 and 194.3015 and in other applicable law, as explained in the next  
4 section titled “The Seven Overarching Standards for Valid Just Valuations.”  
5  
6

### **Proper Consideration of the Just Valuation Factors**

7  
8 ~~Section 193.011, Florida Statutes, states that property appraisers must consider the~~  
9 ~~factors of just valuation.~~

10  
11 ~~Florida court decisions have used the terms *lawfully*, *properly*, *duly*, and *carefully* to~~  
12 ~~describe the standard of care required of property appraisers in considering each of the~~  
13 ~~eight factors.~~

14  
15 ~~\* For example, one court decision used the terms *lawfully* and *properly* to describe the~~  
16 ~~property appraiser’s standard of care. See Mazourek v. Wal-Mart Stores, 831 So.2d 85~~  
17 ~~(Fla. 2002).~~

18  
19 ~~\* Another court decision used the term *duly* to describe the property appraiser’s~~  
20 ~~standard of care. See Atlantic International Investment Corp. v. Turner, 383 So.2d 919~~  
21 ~~(Fla. 5th DCA 1980).~~

22  
23 ~~\* Other court decisions and the Florida Attorney General have used the terms~~  
24 ~~*carefully* and *careful* to describe the property appraiser’s standard of care for~~  
25 ~~considering each of the eight factors.~~

26  
27 ~~\* The property appraiser is required to *carefully* consider each factor and give each~~  
28 ~~factor the weight justified by the facts, but is not required to give each factor equal~~  
29 ~~weight. See Lanier v. Walt Disney World Co., 316 So.2d 59 (Fla. 4th DCA 1975), and~~  
30 ~~Daniel v. Canterbury Towers, Inc., 462 So.2d 497 (Fla. 2nd DCA 1985). Also, see Florida~~  
31 ~~Attorney General’s Opinion AGO 77-106, September 29, 1977.~~

32  
33 ~~\* “*Just value is to be determined by giving careful consideration to each of the factors*~~  
34 ~~*contained in s. 193.011 and by giving such weight to a factor as a particular factual*~~  
35 ~~*situation may justify.” See Florida Attorney General’s Opinion AGO 77-106, September*~~  
36 ~~29, 1977.~~

37  
38 ~~After lawfully considering the factors, the property appraiser may discard entirely any~~  
39 ~~factor that is not probative (indicative) of just value under the circumstances, as long as~~  
40 ~~the appraisal methodology used complies with professionally accepted appraisal~~  
41 ~~practices. See Mazourek v. Wal-Mart Stores, 831 So.2d 85 (Fla. 2002), and Section 194.301,~~

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1 ~~F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). Also, see In re~~  
2 ~~Steffen, 342 B.R. 861 (Bkrtey. M.D. Fla. 2006).~~

3  
4 ~~However, the property appraiser cannot simply “out of hand” reject, without careful~~  
5 ~~consideration, a just valuation factor as being inappropriate in a particular case. See~~  
6 ~~Daniel v. Canterbury Towers, Inc., 462 So.2d 497 (Fla. 2nd DCA 1985).~~

7  
8 ~~In administrative reviews, the property appraiser is responsible for proving by a~~  
9 ~~preponderance of the evidence that he or she complied with Section 193.011, F.S., by~~  
10 ~~properly considering each of the eight factors in developing original just valuations. See~~  
11 ~~Subsection 194.301(1), F.S.~~

12  
13 ~~If the property appraiser does not prove by a preponderance of the evidence that he or~~  
14 ~~she properly considered each of the eight factors in developing the just value~~  
15 ~~assessment, the Board or special magistrate must conclude that the property appraiser~~  
16 ~~did not establish a presumption of correctness for the assessment. See Subsection~~  
17 ~~194.301(1), F.S.~~

### 18 19 **The Seven Overarching Standards for Valid Just Valuations**

20 ~~The 2009 statutory changes in sections 194.301 and 194.3015, F.S., greatly increased~~  
21 ~~the standard of care (level of diligence) for the county appraiser’s development and~~  
22 ~~reporting of just valuations for ad valorem taxation in Florida.~~

23  
24 ~~The 2009 changes also established four additional, determinative statutory standards~~  
25 ~~for valid just valuations, as follows: 1) compliance with professionally accepted appraisal~~  
26 ~~practices, 2) avoidance of arbitrarily different appraisal practices within groups of~~  
27 ~~comparable property within the same county, 3) avoidance of superseded case law, and~~  
28 ~~4) correct application of an appropriate appraisal methodology.~~

29  
30 ~~Under Florida’s current legal framework for just valuations, there are seven overarching~~  
31 ~~standards for valid just valuations. These seven standards must be read and applied~~  
32 ~~together, so that each is given appropriate and lawful meaning in light of the facts.~~

33  
34 ~~Compliance with these seven standards requires the appraiser to correctly apply the~~  
35 ~~appraisal process and “...this important function requires expertise, diligence, sound~~  
36 ~~judgment, and objectivity...” See Uniform Appraisal Standards for Federal Land Acquisition~~  
37 ~~2016 (Appraisal Foundation), page 203.~~

38  
39 ~~These seven overarching standards are listed and described below.~~  
40

1 1. Compliance with Professionally Accepted Appraisal Practices for Appraisal  
2 Development and Appraisal Reporting

3  
4 The section 194.301 standard of professionally accepted appraisal practices applies to  
5 the entire appraisal process that includes both appraisal development and appraisal  
6 reporting, each of which are addressed separately below.

7  
8 Professionally accepted appraisal practices require appraisers to recognize and comply  
9 with current laws and regulations that apply to the appraiser or to the appraisal  
10 assignment. See Competency Rule, *Uniform Standards of Professional Appraisal Practice,*  
11 *2020-2021 Edition (USPAP), page 11.*

12  
13 Compliance with professionally accepted appraisal practices encompasses compliance  
14 with all other law comprising the seven overarching standards.

15  
16 Professionally accepted appraisal practices comprise a voluminous set of practices set  
17 forth in thousands of pages of professional appraisal references. The current edition of  
18 USPAP is a set of standards consisting of 58 pages that address both appraisal and  
19 appraisal review for all types of property.

20  
21 Thus, the two are not the same thing because the professionally accepted appraisal  
22 practices standard is much more extensive and detailed than USPAP.

23  
24 While USPAP is a useful source of information on professionally accepted appraisal  
25 practices, it not a substitute for such practices.

26  
27 Key Elements of Appraisal Development  
28 Under Professionally Accepted Appraisal Practices

29  
30 In the context of Florida ad valorem tax law, appraisal development is the act, by an  
31 appraiser, of applying the appraisal process to arrive at valid just valuations.

32  
33 “Relevant characteristics” is a core appraisal term defined as: “features that may  
34 affect a property’s value or marketability such as legal, economic, or physical  
35 characteristics.” See Definitions, *Uniform Standards of Professional Appraisal Practice,*  
36 *2020-2021 Edition (Washington, DC: The Appraisal Foundation), page 5.*

37  
38 Under professionally accepted appraisal practices, the three categories of appraisal  
39 data that must be applied in the appraisal process are: legal, physical, and economic.  
40 See Standard 5, Mass Appraisal Development, *Uniform Standards of Professional Appraisal*  
41 *Practice, 2020-2021 Edition, page 33. Also, see section 193.1142(1)(c)2., F.S.*  
42

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1 Appraisers are required “to use due diligence and due care.” See Competency Rule,  
2 Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition, page 11.

3  
4 An appraiser’s valuation must be “based on careful scrutiny of all the data available.”  
5 See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007).

6  
7 Appraisers have the “...responsibility to obtain knowledge of all pertinent facts and  
8 circumstances that can be acquired with diligent inquiry and search.” See Uniform  
9 Appraisal Standards for Federal Land Acquisition 2016 (Appraisal Foundation), page 204.

10  
11 “The appraiser must be diligent in data collection and competently apply the accepted  
12 methods and techniques of the appraisal profession...” See Uniform Appraisal Standards  
13 for Federal Land Acquisition 2016 (Appraisal Foundation), page 203.

14  
15 For appraisal evidence to support a just valuation, the evidence must be relevant to the  
16 subject property and must satisfy each of the just valuation standards provided in law.

17  
18 The three approaches to just valuation are: 1) the cost less depreciation approach, 2)  
19 the sales comparison approach, and 3) the income capitalization approach.

- 20  
21
  - Each of the three approaches has variants, depending on: 1) the legal, physical, and  
22 economic attributes of the subject property; 2) the availability of appraisal data; and  
23 3) the appropriate appraisal methodology.

24  
25 Generally, property appraisers use mass appraisal techniques to develop just valuations  
26 each year, but property appraisers may also use single-property appraisal techniques.

27  
28 When properly applied in compliance with all requirements of law, both mass appraisal  
29 and single-property appraisal are professionally accepted appraisal practices.

30  
31 It is implicit in mass appraisal that, even when properly specified and calibrated mass  
32 appraisal models are used, some individual value conclusions will not meet standards of  
33 reasonableness, consistency, and accuracy. See Standard 5, Mass Appraisal Development,  
34 Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition, page 37.

35  
36 Regardless of the appraisal approach or technique used to develop a particular just  
37 value, the approach, technique, and value are subject to review to determine whether  
38 the appraisal process complies with all applicable legal standards.

39  
40 Summarized below are some key elements of the standard of care (level of diligence)  
41 for development of just valuations for Florida ad valorem tax purposes:

42

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- 1 • Identify the legal, physical, and economic attributes of the subject property
- 2
- 3 • Identify and comply with all applicable law, and avoid superseded case law
- 4
- 5 • Determine the required data, research, and analysis, and identify the professionally
- 6 accepted appraisal practices and an appropriate appraisal methodology
- 7
- 8 • Collect, analyze, and maintain legal, physical, and economic data as necessary for
- 9 credible valuations that comply with applicable law
- 10
- 11 • Apply due diligence and due care in the appraisal process, avoid carelessness and
- 12 negligence, and avoid significant errors of commission and omission
- 13
- 14 • Comply with each of the 193.011 factors consistent with all other just valuation
- 15 standards (avoid cursory consideration of 193.011 factors, correctly apply the factors
- 16 needed for a credible and lawful just valuation, and develop professionally accepted
- 17 reasons for not applying any factor not applied)
- 18
- 19 • Avoid appraisal practices that are arbitrarily different from the appraisal practices
- 20 applied to other comparable property in the same county
- 21
- 22 • Correctly apply an appropriate appraisal methodology that complies with
- 23 professionally accepted appraisal practices and each of the other legal standards
- 24
- 25 • Reconcile data and analyses used, and correctly employ quality review procedures
- 26

### Key Elements of Appraisal Reporting Under Professionally Accepted Appraisal Practices

30 Professionally accepted appraisal practices require communicating, or reporting, the  
31 appraisal process used to develop the just valuation. An appraisal report is any  
32 communication, written or oral, about the appraisal process applied in just valuations.

34 Appraisal reporting is part of the appraisal process and is how the appraiser  
35 demonstrates compliance with each of the just valuation standards provided by law.

37 Conclusory statements made by an appraiser reporting an appraisal process are not  
38 sufficient and are not credible. See Scripps Howard Cable Co. v. Havill, 665 So.2d 1071,  
39 1077 (Fla. 5th DCA 1995), approved, 742 So.2d 210 (Fla. 1998).

40



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1 The text, *Fundamentals of Mass Appraisal*, published in 2011 by the International  
2 Association of Assessing Officers, pages 4-5, lists appraisal reporting as part of the  
3 appraisal process and then states in pertinent part:

4  
5 “Professional standards, however, require all appraisers to work systematically,  
6 document their work, communicate their opinions of value clearly, and behave ethically.”

7  
8 The text, *The Appraisal of Real Estate, Fifteenth Edition*, published in 2020 by the  
9 Appraisal Institute, pages 31 and 37, lists appraisal reporting as part of the appraisal  
10 process and then states in part as follows:

11  
12 “The report of the value opinion or conclusion addresses the data analyzed, the  
13 methods applied, and the reasoning that led to the value conclusion and does so in a  
14 manner that enables the intended users to properly understand the appraiser’s findings  
15 and conclusions. The objective of the appraisal report is to communicate the valuation  
16 process with sufficient supporting evidence and logic to ensure that the assignment  
17 results are credible for the intended use.”

18  
19 Standard 6, Mass Appraisal Reporting, *Uniform Standards of Professional Appraisal*  
20 Practice, 2020-2021 Edition, page 39, requires appraisers to explain the exclusion of  
21 any of the three approaches to value and to:

22  
23 “provide sufficient information to enable the client and intended users to have  
24 confidence that the process and procedures used conform to accepted methods and  
25 result in credible value conclusions;”

26  
27 A recent trial court judgment states as follows regarding appraisal reporting:

28  
29 “The 2009 legislation requires the Court to determine whether the appraiser used an  
30 appropriate methodology in making the assessment. To allow the Court to make this  
31 determination, the property appraiser must present sufficient evidence that describes  
32 the appraisal methodology and explains how and why it was applied in valuing the  
33 Subject Property. Under section 194.301(1), the appraiser has the burden of going  
34 forward and presenting testimonial and documentary evidence explaining how the  
35 appraiser satisfied each of the just valuation criteria.”

36 See *Dillard’s, Inc. v. Singh*, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).

37  
38 Summarized below are some key elements of the standard of care (level of diligence)  
39 for just valuation reporting:

- 40  
41
  - Must provide meaningful disclosure of procedures applied in the appraisal process

42

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- 1 • Must be relevant to the legal, physical, and economic attributes of the property, each  
2 of the applicable legal criteria, and the appraisal process
- 3
- 4 • Must be credible in the context of Florida ad valorem property tax appraisal
- 5
- 6 • Must be clear and accurate to enable intended users to understand the appraisal  
7 process
- 8
- 9 • Must include explanations and reasons, addressing each of the valuation approaches  
10 and each of the applicable legal criteria, regarding what was actually done and how  
11 and why, in developing the just value
- 12
- 13 • Must provide lawful and professionally accepted explanations and reasons for not  
14 applying a legal criterion or not applying an appraisal approach
- 15
- 16 • Must be sufficient for intended users to understand how and why the just value was  
17 developed via the methodology used
- 18
- 19 • Must avoid misleading statements, conclusory statements, and superseded case law
- 20

### 2. Compliance with Each of the Just Valuation Factors in Section 193.011, F.S.

21  
22  
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.

- 25
- 26 • These eight just valuation factors must now be applied together with the other just  
27 valuation standards in sections 194.301 and 194.3015, F.S., and in other applicable  
28 law, so that each standard is given professionally accepted and lawful meaning.
- 29
- 30 • The method of just valuation and the weight to be given to each of the section  
31 193.011 factors is now governed solely by: 1) the legal, physical, and economic  
32 characteristics of the subject property; 2) the four additional determinative standards  
33 in sections 194.301 and 194.3015, F.S.; and 3) all other applicable law.
- 34
- 35 • In just valuations under current law, it is necessary to actually apply the section  
36 193.011 factors that are appropriate for compliance with the four new determinative  
37 standards in sections 194.301 and 194.3015 and all other applicable law.
- 38
- 39 • Under the dictates of section 194.301 and 194.3015, F.S., for any section 193.011  
40 factor not applied in a particular just valuation, the appraiser must report a clear,  
41 logical, fact-based, and professionally accepted reason for excluding the factor.
- 42

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1 Pre-2009 just valuation case law is replete with obsolete statements indicating a much  
2 lower level of diligence (standard of care) for developing and reporting just valuations  
3 than required by current law, and these obsolete statements must be avoided.

4  
5 Just valuation evidence, including evidence intended to show the property appraiser's  
6 compliance with each of the section 193.011 factors, "must be real, material, pertinent,  
7 and relevant evidence, as opposed to ethereal, metaphysical, speculative, theoretical,  
8 or hypothetical, and it must have definite probative value." See Singh v. Walt Disney  
9 Parks, --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).

10  
11 The legal, physical, and economic characteristics of the subject property must be  
12 reflected in the appraisal data applied for the eight factors in section 193.011 and must  
13 be applied in all just valuation approaches.

14  
15 The appraiser's compliance with legal standards, including the just valuation  
16 factors in section 193.011, must be demonstrated in the appraisal data, analyses,  
17 practices, and methods used to develop and report just valuations.

18  
19 Appraisal approaches (methods), the application of legal standards including the section  
20 193.011 factors, and the validity of resulting values are interconnected and cannot  
21 logically be separated.

22  
23 In administrative reviews, the overarching legal standards should be applied in  
24 determining whether the appraisal methodology used in making a value  
25 assessment is appropriate under the circumstances and this, in turn, should be  
26 applied in determining whether the value assessment is valid.

27  
28 Below are two examples of how court decisions have correctly applied the section  
29 193.011 factors in reviewing appraisal methodology and resulting just valuations.

- 30  
31
  - Though these examples are pre-2009, they show the connection between legal  
32 criteria, appraisal methods, and values, and are used here for that purpose.

33  
34 Example 1: The court's decision described a mathematical connection between  
35 "erroneous consideration" of statutory criteria, an "improper" appraisal method, and  
36 an excessive value. See Holly Ridge Ltd. Partnership v. Pritchett, 936 So.2d 694, 697-  
37 698 (Fla. 5th DCA 2006), rehearing denied.

38  
39 Example 2: The court's decision connected the appraisal method, the application of  
40 legal criteria, and the rejection of an appraised value, in holding as follows:  
41

1 “The trial court rejected the appellants' appraisal because it found that their appraisal  
2 method failed to take into consideration all the factors set forth in section 193.011,  
3 Florida Statutes (1981).”

4  
5 “Failure to consider one or more of the factors set forth in section 193.011 is sufficient to  
6 invalidate an appraisal done by a tax assessor...”

7  
8 “We also think the lower court correctly rejected appellants' appraisal because the  
9 method used was too speculative.”

10  
11 See Muckenfuss v. Miller, 421 So.2d 170, 173-174 (Fla. 5th DCA 1982), petition for review  
12 denied, 430 So.2d 450, 451 (Fla. 1983).

13  
14 **3. Avoidance of Arbitrarily Different Appraisal Practices Within Groups of**  
15 **Comparable Property Within the Same County.**

16  
17 Section 194.301(2)(a)3., F.S., provides that to withstand judicial or administrative  
18 review, a just valuation cannot be: “...arbitrarily based on appraisal practices that are  
19 different from the appraisal practices generally applied by the property appraiser to  
20 comparable property within the same county.”

21  
22 Along similar lines, section 195.0012, F.S., expresses legislative intent for assessment  
23 uniformity including “...uniform assessment as between property within each county...”

24  
25 The U.S. Supreme Court has also emphasized that “the uniformity and equality required  
26 by law” is of paramount concern in property assessment valuations. See Sioux City  
27 Bridge Co. v. Dakota Cty. Neb., 260 U.S. 441, 446–47 (1923), cited in Southern Bell Tel. & Tel.  
28 Co. v. Dade Cty., 275 So. 2d 4, 8 (Fla. 1973).

29  
30 Avoiding arbitrarily different appraisal practices within groups of comparable property  
31 within the same county supports the goal of assessment uniformity.

32  
33 Selective reappraisal is an example of arbitrarily different appraisal practices. The text,  
34 Mass Appraisal of Real Property, published in 1999 by the International Association of  
35 Assessing Officers, page 315, explains selective reappraisal, stating in pertinent part:

36  
37 “The reliability of sales ratio statistics depends on unsold parcels being appraised in the  
38 same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio  
39 results, possibly rendering them useless. Equally important, selective reappraisal of  
40 sold parcels (“sales chasing”) is a serious violation of basic appraisal uniformity and is  
41 highly unprofessional.”  
42

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1 Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See  
2 Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).  
3

### 4 4. Avoidance of Superseded Case Law.

5

6 In 2009, the Florida Legislature made crystal clear its intent to supersede case law that  
7 is inconsistent with legislative enactments in sections 194.301 and 194.3015, F.S.  
8

9 The 2009 enactments re-engineered the development, reporting, and review of just  
10 valuations in Florida. Yet, in some cases, these major statutory changes have not been  
11 applied in practice and this continues to be a serious problem.  
12

13 Pre-2009 case law, as well as some post-2009 legal arguments based on obsolete pre-  
14 2009 case law, do NOT reflect the major statutory changes enacted in 2009.  
15

16 For public trust to exist in the VAB process, VABs, VAB attorneys, and special  
17 magistrates must understand and act in accordance with this landmark legislation and  
18 must be diligent in avoiding the use of obsolete case law in the VAB process.  
19

20 The last sentence in subsection 194.301(1), F.S., now states: “*The provisions of this*  
21 *subsection preempt any prior case law that is inconsistent with this subsection.*”  
22

23 Further, section 194.3015, F.S., now states in its entirety:  
24

25 “(1) It is the express intent of the Legislature that a taxpayer shall never have the  
26 burden of proving that the property appraiser’s assessment is not supported by any  
27 reasonable hypothesis of a legal assessment. All cases establishing the every-  
28 reasonable-hypothesis standard were expressly rejected by the Legislature on the  
29 adoption of chapter 97-85, Laws of Florida. It is the further intent of the Legislature that  
30 any cases published since 1997 citing the every-reasonable-hypothesis standard are  
31 expressly rejected to the extent that they are interpretive of legislative intent.”  
32

33 “(2) This section is intended to clarify existing law and apply retroactively.”  
34

35 In 1997, the Florida Legislature, in an attempt to implement fairness for property  
36 taxpayers, enacted the original version of section 194.301, F.S., stating in pertinent part:  
37

38 “In no case shall the taxpayer have the burden of proving that the property appraiser’s  
39 assessment is not supported by any reasonable hypothesis of a legal assessment.”  
40

41 In the 1996 to 1998 period, multiple law articles addressed issues in the assessment  
42 appeal process and legislative efforts to address fairness for property taxpayers.

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1  
2 In 2001, despite the 1997 enactment of section 194.301, F.S., in Wal-Mart v. Todora,  
3 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the court issued a decision that actually applied  
4 the “reasonable hypothesis” standard, stating:

5  
6 “Because there are so many well-recognized approaches for arriving at an appraisal,  
7 the appraiser’s decision may be overturned only if there is no reasonable hypothesis to  
8 support it.”

9  
10 In 2002, again despite the 1997 enactment of section 194.301, in Mazourek v. Wal-  
11 Mart, 831 So. 2d 85, 91 (Fla. 2002), the court extended the error by quoting the 2001  
12 decision in Wal-Mart v. Todora, likewise stating:

13  
14 “Because there are so many well-recognized approaches for arriving at an appraisal,  
15 the appraiser’s decision may be overturned only if there is no reasonable hypothesis to  
16 support it.”

17  
18 In 2006, the decision from In re Lifestream Technologies, LLC, 337 B.R. 705, 710  
19 (Bkrcty. M.D. Fla. 2006) further extended the same error by quoting from Mazourek,  
20 instead of following the Legislature’s 1997 directive in section 194.301, F.S.

21  
22 Then, in 2009, the Florida Legislature completely amended section 194.301 and created  
23 section 194.3015, addressing in both the problem of superseded case law.

24  
25 In 2013 in CVS EGL Fruitville Sarasota FL, LLC and Holiday CVS, LLC. v. Todora, 124  
26 So. 3d 289 (Fla. 2d DCA 2013), the Second District Court of Appeal admitted the error it  
27 made in the aforementioned 2001 case of Wal-Mart v. Todora, and explained how this  
28 error was extended when the Florida Supreme Court quoted the error in its  
29 aforementioned 2002 decision in Mazourek v. Wal-Mart.

30  
31 Also, in CVS EGL, the Second District Court explained an example of the legislative  
32 intent behind the 2009 enactments in sections 194.301 and 194.3015, stating:

33  
34 “Because the legislature rejected the application of “any cases published since 1997  
35 citing the every-reasonable-hypothesis standard,” it follows that the legislature intended  
36 to supersede Todora and Mazourek. We must therefore give deference to the  
37 legislature and conclude that Todora and Mazourek are not controlling.”

38  
39 In July 2016, the difficulty with applying sections 194.301 and 194.3015 appeared in a  
40 final judgment (Singh v. Darden Restaurants, Inc.) where the trial court erred because it  
41 failed to apply standards in sections 194.301 and 194.3015, and instead applied  
42 obsolete case law standards based on assessment “discretion.”

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1  
2 Then, in Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019),  
3 the Fifth District Court overturned the July 2016 trial judgment and explained how the  
4 trial judgment erroneously applied pre-2009 case law, stating in pertinent part:

5  
6 “...in its final judgment, the trial court cited to language from Mazourek v. Wal-Mart  
7 Stores, Inc., 831 So. 2d 85, 89 (Fla. 2002), that “[t]he property appraiser’s determination  
8 of assessment value is an exercise of administrative discretion within the officer’s field  
9 of expertise.” The Mazourek decision preceded the 2009 amendment to section  
10 194.301, Florida Statutes, where the Legislature articulated that the value of property  
11 must be determined by an appraisal methodology that met the criteria of section  
12 193.011 and professionally accepted appraisal practices.”

### Other Examples of Superseded Case Law

13  
14  
15  
16 The holdings in some court decisions based on the legislatively rejected “reasonable  
17 hypothesis” standard show an interconnection between such standard and the obsolete  
18 concomitant (attendant) standards that also appeared in such holdings.

19  
20 For example, in CVS EGL (2013), the court rejected the concomitant standard of “within  
21 the range of reasonable appraisals” because of its interconnection with the legislatively  
22 rejected “reasonable hypothesis” standard.

23  
24 Eight examples of superseded case law are listed and described below.

25  
26 None of these superseded standards is harmless because they unequivocally reflect a  
27 lower standard of care and diligence for developing, reporting, and reviewing just values  
28 than the standards required by current law in sections 194.301 and 194.3015.

29  
30 VABs, VAB attorneys, and special magistrates must be diligent to avoid using any of  
31 these types of superseded standards and to reject any arguments espousing them.

### **Superseded Concomitant Standard No. 1:**

32  
33  
34 “the core issue in any action challenging a tax assessment is the  
35 amount of the assessment, not the methodology utilized in arriving at the valuation”

36  
37 In Bystrom v. Whitman, 488 So. 2d 520, 521 (Fla. 1986), the court applied this obsolete  
38 standard together with the rejected “reasonable hypothesis” standard.

39  
40 In 2007 in CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007), the U.S.  
41 Supreme Court emphasized the necessity of reviewing appraisal methodology in

1 valuations disputes, stating: “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 2009, the Legislature enacted four new determinative just valuation standards, each  
5 providing methodological requirements for developing and reviewing just valuations.

6  
7 **Superseded Concomitant Standard No. 2:**

8 “within the range of reasonable appraisals”

9  
10 In Blake v. Xerox, 447 So. 2d 1348 (Fla. 1984), the court equated this obsolete  
11 concomitant standard with the “reasonable hypothesis” standard, stating:

12  
13 “Regardless of which method was theoretically superior, the trial court was bound to  
14 uphold the appraiser’s determination if it was lawfully arrived at and within the range of  
15 reasonable appraisals, that is, if it was supported by any reasonable hypothesis of  
16 legality.”

17  
18 In CVS EGL (2013), the court applied section 194.3015 in overturning a trial judgment  
19 that had used the legislatively rejected “reasonable hypothesis” standard and its  
20 concomitant standard of “within the range of reasonable appraisals,” stating:

21  
22 “At no point during the trial court’s application of these standards should it consider  
23 whether the assessment is within the range of reasonable appraisals or whether it is  
24 supported by any reasonable hypothesis of legality.”

25  
26 **Superseded Concomitant Standard No. 3:**

27 “[t]he property appraiser’s determination of assessment value  
28 was an exercise of administrative discretion within the officer’s field of expertise”

29  
30 In Blake v. Xerox, 447 So. 2d 1348, 1350 (Fla. 1984), the decision linked this old  
31 standard with the legislatively rejected “reasonable hypothesis” standard.

32  
33 This obsolete statement runs afoul of diligence requirements in the current standards of  
34 professionally accepted appraisal practices and appropriate appraisal methodologies.

35  
36 In Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019), the  
37 court recognized this concomitant standard as being obsolete since 2009.

38  
39 **Superseded Concomitant Standard No. 4:**

40 “the method of valuation and the weight  
41 to be given each factor is left to the appraiser’s discretion”



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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.

### **Superseded Concomitant Standard No. 5:**

21  
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

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1 “Serving this important function requires expertise, diligence, sound judgment, and  
2 objectivity...”

3  
4 “The appraiser must be diligent in data collection and competently apply the accepted  
5 methods and techniques of the appraisal profession...”

6  
7 “Appraisers must exercise sound judgment based on known pertinent facts and  
8 circumstances, and it is their responsibility to obtain knowledge of all pertinent facts and  
9 circumstances that can be acquired with diligent inquiry and search. They must then  
10 weigh and consider the relevant facts, exercise sound judgment, and develop an  
11 opinion that is completely unbiased by any consideration favoring either the landowner  
12 or the government.”

13  
14 Thus, appraisal judgment is NOT a substitute for appraisal expertise, diligence, or  
15 objectivity. For valid just valuations, appraisal judgment must be sound and must be  
16 applied in compliance with the seven overarching standards for valid just valuations.

### **Superseded Concomitant Standard No. 6:**

17  
18 “Appraisal is an art, not a science”

19  
20  
21 In 1969 in Powell v. Kelly 223 So. 2d 305 (Fla. 1969), court applied this obsolete  
22 standard along with the legislatively rejected “reasonable hypothesis” standard.

23  
24 In its 2007 decision on ad valorem appraisal methodology, the U.S. Supreme Court held  
25 that appraisal is an “applied science.” See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552  
26 U.S. 9 (2007), 552 U.S. 9 (2007).

27  
28 On appraisal being a science, Appendix A of the widely cited textbook, *The Appraisal of*  
29 *Real Estate, 15th Edition*, published in 2020 by the Appraisal Institute, states:

30  
31 “Professional appraisal practice applies the scientific processes of economic analyses  
32 (i.e., the valuation process) to develop conclusions in an impartial, objective manner,  
33 without bias or any desire on the part of appraisers to accommodate their own interests  
34 or the interests of their clients. To form sound conclusions, appraisers avoid personal  
35 beliefs or biases and search for market evidence to support their appraisal opinions. It is  
36 this level of independence and freedom from either personal views or personal financial  
37 gain, and strict adherence to the scientific principles contained in the valuation process,  
38 that separate the profession of appraisal from other fields that also deal with real estate  
39 values.”

### **Superseded Concomitant Standard No. 7:**

40  
41 “Because there are so many well-recognized approaches for arriving at an appraisal...”  
42

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1  
2 In Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the Second District Court  
3 ignored section 194.301 and applied this obsolete concomitant standard together with  
4 the now legislatively rejected “reasonable hypothesis” standard, stating:

5  
6 “Because there are so many well-recognized approaches for arriving at an appraisal,  
7 the appraiser’s decision may be overturned only if there is no reasonable hypothesis to  
8 support it.”

9  
10 Then, in CVS EGL (2013), the Second District Court admitted its 2001 error in Wal-Mart  
11 v. Todora and applied section 194.3015 in overturning a May 2012 trial judgment that  
12 had erroneously applied these superseded standards.

13  
14 **Superseded Concomitant Standard No. 8:**  
15 **“an appraiser may reach a correct result for the wrong reason”**

16  
17 In City National Bank v. Blake, 257 So. 2d 264 (Fla. 3d DCA 1972), the court equated  
18 this concomitant standard with the now legislatively rejected every “reasonable  
19 hypothesis” standard, stating:

20  
21 “A tax assessment is presumed correct, and in order to successfully challenge it, the  
22 taxpayer must present proof which excludes every reasonable hypothesis of a legal  
23 assessment. That is, an assessor may reach a correct result for the wrong reason.”

24  
25 This old standard was rendered obsolete by the U.S. Supreme Court’s 2007 decision in  
26 CSX and by Florida’s enactments in sections 194.301 and 194.3015, F.S.

### **5. Compliance with All Other Applicable Law.**

27  
28  
29  
30 Other applicable law includes just valuation standards for particular situations. These  
31 standards may exist in Florida Statutes or in currently applicable case law.

32  
33 Examples of other just valuation standards from statutes include the following:

- 34  
35 • Section 192.042(1), F.S., provides the January 1 date of assessment.  
36  
37 • Section 192.042(1), F.S., provides just valuation criteria for real property not  
38 substantially completed as of January 1.  
39  
40 • Sections 192.037(10), (11), and (12), F.S., provide additional just valuation criteria for  
41 timeshare real property.  
42

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- 1 • Sections 193.017, 420.507(46), 420.5093(5) and (6), and 420.5099(5) and (6),  
2 provide additional just valuation criteria for low-income housing property.  
3
- 4 • Section 193.018, F.S., provides additional just valuation criteria for community land  
5 trust property.  
6
- 7 • Section 193.0237, F.S., provides definitions and a methodology for the assessment  
8 of multiple parcel buildings.  
9
- 10 • Section 193.501, F.S., provides additional just valuation criteria for certain  
11 conservation property.  
12

13 Other applicable law may also include current case law standards such as:  
14

- 15 • Case law specifies fee simple estate as the interest to be appraised in just valuations.  
16 See Schultz v. TM Fla.-Ohio Realty, Ltd., 577 So.2d 573 (Fla. 1991), and see Dept. of  
17 Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 (Fla. 1977).  
18
- 19 • Case law precludes real property just valuations based on bulk ownership. See  
20 Interlachen Lakes Estates, Inc. v. Snyder, 304 So.2d 433 (Fla. 1973).  
21
- 22 • Case law precludes just valuation methods that include intangible value. See Scripps  
23 Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), and see Singh v. Walt Disney Parks,  
24 --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).  
25

### **6. Correct Application of an Appropriate Appraisal Methodology** 26 27

28 After its 2009 amendment, section 194.301(1), F.S., provides in pertinent part:  
29

30 *“However, a taxpayer who challenges an assessment is entitled to a determination by*  
31 *the value adjustment board or court of the appropriateness of the appraisal*  
32 *methodology used in making the assessment. The value of property must be*  
33 *determined by an appraisal methodology that complies with the criteria of s. 193.011*  
34 *and professionally accepted appraisal practices. The provisions of this subsection*  
35 *preempt any prior case law that is inconsistent with this subsection.”*  
36

37 An appropriate appraisal methodology is one that: 1) identifies and is appropriately  
38 based on the legal, physical, and economic characteristics of the subject property, 2)  
39 complies with overarching standards one through five, and 3) is correctly applied.  
40

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1 In Scripps Howard Cable Co. v. Havill, 665 So. 2d 1071 (Fla. 5th DCA 1995), approved,  
2 742 So. 2d 210 (Fla. 1998), the court held that the appraisal method under review was  
3 not appropriate under the circumstances and certified the following question:

4  
5 *“Is the Income/Unit Rule Method of Appraisal an Appropriate Method of Assessing the*  
6 *Tangible Personal Property of Television Cable Companies?”*

7  
8 Then, in Scripps Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), the Florida  
9 Supreme Court answered the certified question in the negative and approved the  
10 decision of the Fifth District, holding that the method was not appropriate because it  
11 unlawfully included the value of intangible property.

12  
13 In 2007, the U.S. Supreme Court held that disputes over ad valorem tax values require  
14 review of the appraisal methodology. See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552  
15 U.S. 9 (2007), 552 U.S. 9 (2007) (“We do not see how a court can go about determining true  
16 market value if it may not look behind the State’s choice of valuation methods”).

17  
18 In August 2020, the court issued its final decision in Singh v. Walt Disney Parks, ---  
19 So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020), stating in pertinent part:

20  
21 *“At trial, the parties agreed that the income approach to value was a*  
22 *professionally accepted appraisal practice and provided the most reliable*  
23 *indicator of value, but they disputed the proper methodology for performing such*  
24 *an assessment.”*

25  
26 *“Moreover, it ruled that even if the Rushmore method was a professionally accepted*  
27 *appraisal practice, it could not be used in a manner that violated Florida law. The trial*  
28 *court concluded that by including value attributable to Disney business activities on the*  
29 *Property, Appraiser applied the Rushmore method in a way that violated Florida law.”*

30  
31 *“We agree with the trial court that Appraiser, in the manner in which he applied the*  
32 *Rushmore method, impermissibly included the value of Disney’s intangible business*  
33 *assets in its assessment.”*

34  
35 The Disney decision shows even if an appraisal practice is professionally accepted in  
36 other contexts, it cannot be applied in a manner that violates another part of Florida law.

37  
38 Later, in October 2020, a trial court issued a final judgment stating as follows regarding  
39 appropriate appraisal methodology.

40  
41 *“The Property Appraiser failed to prove by a preponderance of the evidence that his*  
42 *assessment was arrived at by utilizing methodology complying with section 193.011 and*

1 professionally accepted appraisal practices. Additionally, the Court finds the Property  
2 Appraiser's sole reliance on a cost approach without considering and preparing at least  
3 one of an income and/or sales comparison approach for the Subject Property type was  
4 not an appropriate appraisal methodology used in making the assessment."  
5 See Dillard's, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).  
6

7 **7. A Just Valuation Developed and Reported in Compliance with Overarching**  
8 **Standards One through Six and Supported by a Preponderance of the Relevant**  
9 **and Credible Evidence**

10  
11 For a just valuation to withstand the scrutiny of review, it must be developed and  
12 reported in compliance with overarching standards one through six and must be  
13 supported by a preponderance of the relevant and credible just valuation evidence.  
14

15  
16 **Petitioner Not Required to Present Opinion or Estimate of Value**

17 The petitioner is not required to provide an opinion or estimate of just value.

18  
19 No provision of law requires the petitioner to present an opinion or estimate of value.

20  
21 The Board or special magistrate is not authorized to require a petitioner to provide an  
22 opinion or estimate of just value.

23  
24 The petitioner has the option of choosing whether to present an opinion or estimate of  
25 just value.  
26

27  
28 **Presentation of Evidence by the Parties**

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

32  
33 An appraisal report shall not be submitted as evidence in a value adjustment board  
34 proceeding in any tax year in which the person who performed the appraisal serves as a  
35 special magistrate to that county value adjustment board for the same tax year. See  
36 Rule 12D-9.025(4)(g), F.A.C.  
37

38 Under Subsection 194.301(1), F.S., in a hearing on just value, the first issue to be  
39 considered is whether the property appraiser establishes a presumption of correctness.

40  
41 \* The property appraiser shall present evidence on this issue first. See Rule 12D-  
42 9.024(7), F.A.C.

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1  
2 \* While the property appraiser is required to present evidence on this issue first, the  
3 Board or special magistrate must allow the petitioner a chance to present evidence  
4 on this issue before deciding whether the presumption of correctness is established.  
5

6 In a Board or special magistrate hearing, the petitioner is responsible for presenting  
7 relevant and credible evidence in support of his or her belief that the property  
8 appraiser's determination is incorrect. See Rule 12D-9.025(3)(a), F.A.C.  
9

10 If the property appraiser establishes a presumption of correctness by proving by a  
11 preponderance of the evidence that the just value assessment was arrived at by  
12 complying with Section 193.011, F.S., and professionally accepted appraisal practices,  
13 including mass appraisal standards, if appropriate, the petitioner must prove by a  
14 preponderance of the evidence that:

- 15 1. The property appraiser's just valuation does not represent just value; or
- 16 2. The property appraiser's just valuation is arbitrarily based on appraisal practices that  
17 are different from the appraisal practices generally applied by the property appraiser  
18 to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as  
19 amended by Chapter 2009-121, Laws of Florida (House Bill 521).  
20  
21  
22

23 However, if the property appraiser does not establish a presumption of correctness  
24 because he or she did not prove by a preponderance of the evidence that the just  
25 valuation was arrived at by complying with Section 193.011, F.S., and professionally  
26 accepted appraisal practices, including mass appraisal standards, if appropriate, the  
27 Board or special magistrate must take one of the two following actions:  
28

- 29 1. If the record contains competent substantial evidence of just value that cumulatively  
30 meets the requirements of Section 193.011, F.S., and professionally accepted  
31 appraisal practices, the Board or special magistrate must establish a revised just  
32 value; or  
33
- 34 2. If the record lacks such competent substantial evidence, the Board or special  
35 magistrate must remand the assessment to the property appraiser with appropriate  
36 directions with which the property appraiser must comply.  
37  
38

### **Evaluation of Evidence by the Board or Special Magistrate**

39 Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special  
40 magistrate must:  
41  
42

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- 1 1. Review the evidence presented by the parties;
- 2
- 3 2. Determine whether the evidence presented is admissible;
- 4
- 5 3. Admit the evidence that is admissible;
- 6
- 7 4. Identify the evidence presented to indicate that it is admitted or not admitted; and
- 8
- 9 5. Consider the admitted evidence.

10  
11 The term “admitted evidence” means evidence that has been admitted into the record  
12 for consideration by the Board or special magistrate. See Rule 12D-9.025(2)(a), F.A.C.

13  
14 *“No evidence shall be considered by the board or special magistrate except when*  
15 *presented and admitted during the time scheduled for the petitioner’s hearing, or at a*  
16 *time when the petitioner has been given reasonable notice.”* See Rule 12D-9.025(4)(a),  
17 F.A.C.

18  
19 *“If a party submits evidence to the board clerk prior to the hearing, the board or special*  
20 *magistrate shall not review or consider such evidence prior to the hearing.”* See Rule  
21 12D-9.025(4)(b), F.A.C.

22  
23 Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:

- 24  
25 1. *“As the trier of fact, the board or special magistrate may independently rule on the*  
26 *admissibility and use of evidence.”*
- 27  
28 2. *“If the board or special magistrate has any questions relating to the admissibility and*  
29 *use of evidence, the board or special magistrate should consult with the board legal*  
30 *counsel.”*
- 31  
32 3. *“The basis for any ruling on admissibility of evidence must be reflected in the*  
33 *record.”*
- 34  
35 4. *“The special magistrate may delay ruling on the question during the hearing and*  
36 *consult with board legal counsel after the hearing.”*

37  
38 The Board or special magistrate shall consider the admitted evidence. See Rule 12D-  
39 9.025(1)(d), F.A.C.

40  
41 A property owner generally is qualified, on account of ownership, to testify regarding the  
42 just value of his or her property. See In re Steffen, 342 B.R. 861 (Bkrtcy. M.D. Fla. 2006).



1  
2 NOTE: More information on the admissibility of evidence is presented in Module 4 of  
3 this training.  
4

5  
6 **Sufficiency of Evidence**

7 When applied to evidence, the term “sufficient” is a test of adequacy. See Rule 12D-  
8 9.027(6), F.A.C.  
9

10 Sufficient evidence is admitted evidence that has enough overall weight, in terms of  
11 relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6),  
12 F.A.C.  
13

14 The Florida Supreme Court stated the following regarding sufficient evidence:  
15 “Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character,  
16 weight, or amount, as will legally justify the judicial or official action demanded.” See  
17 Tibbs v. State, 397 So.2d 1120 (Fla. 1981). Also, see Moore v. State, 800 So.2d 747 (Fla. 5th  
18 DCA 2001).  
19

20 A particular conclusion is justified when the overall weight of the admitted evidence  
21 meets the standard of proof that applies to the issue under consideration. See Rule 12D-  
22 9.027(6), F.A.C.  
23

24 The Board or special magistrate must consider the admitted evidence and determine  
25 whether it is sufficiently relevant and credible to reach the “preponderance of the  
26 evidence” standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-  
27 9.027(5), and 12D-9.027(6), F.A.C.  
28

29 Rule 12D-9.027(6), F.A.C., states the following in pertinent part: “In determining  
30 whether the admitted evidence is sufficient for a particular issue under consideration,  
31 the board or special magistrate shall:  
32

- 33 (a) Consider the relevance and credibility of the admitted evidence as a whole,  
34 regardless of which party presented the evidence;  
35  
36 (b) Determine the relevance and credibility, or overall weight, of the evidence;  
37  
38 (c) Compare the overall weight of the evidence to the standard of proof;  
39  
40 (d) Determine whether the overall weight of the evidence is sufficient to reach the  
41 standard of proof; and  
42

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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

### **Requirements for Establishing a Presumption of Correctness**

37  
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

1 accepted appraisal practices, including mass appraisal standards, if appropriate. See  
2 Rule 12D-9.027(2)(a), F.A.C.

3  
4 A presumption of correctness for the assessment is established only when the property  
5 appraiser proves by a preponderance of the evidence that the property appraiser's just  
6 valuation methodology complies with Section 193.011, F.S., and professionally  
7 accepted appraisal practices, including mass appraisal standards, if appropriate.  
8  
9

### 10 **Requirements for Overcoming a Presumption of Correctness**

11 If the property appraiser establishes a presumption of correctness, the petitioner can  
12 overcome the presumption of correctness by proving by a preponderance of the  
13 evidence one of the following:  
14

- 15 1. The property appraiser's just valuation does not represent just value; or
- 16 2. The property appraiser's just valuation is arbitrarily based on appraisal practices that  
17 are different from the appraisal practices generally applied by the property appraiser  
18 to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as  
19 amended by Chapter 2009-121, Laws of Florida (House Bill 521).  
20  
21

22 If the property appraiser establishes a presumption of correctness and the petitioner  
23 does not overcome the presumption of correctness as described above, the  
24 assessment stands.  
25  
26

### 27 **Establishing a Revised Just Value or Remanding the Assessment**

28 If the property appraiser does not establish a presumption of correctness for the  
29 assessment, or if the petitioner overcomes the presumption of correctness, the Board or  
30 special magistrate must take one of the two following actions:  
31

- 32 1. If the record contains competent substantial evidence of just value that cumulatively  
33 meets the requirements of Section 193.011, F.S., and professionally accepted  
34 appraisal practices, the Board or special magistrate must establish a revised just  
35 value; or  
36
- 37 2. If the record lacks such competent substantial evidence, the Board or special  
38 magistrate must remand the assessment to the property appraiser with appropriate  
39 directions with which the property appraiser must comply.  
40

41 NOTE: Information on the procedural requirements for remanded assessments is  
42 presented in Module 5 of this training.

1  
2  
3 **Competent Substantial Evidence for Establishing a Revised Just**  
4 **Value**

5 Competent substantial evidence for establishing a revised just value, as part of an  
6 administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:

- 7  
8 1. Cumulatively meets the criteria of Section 193.011, F.S., and professionally  
9 accepted appraisal practices;  
10  
11 2. Tends to prove (is probative of) just value as of January 1 of the assessment year  
12 under review;  
13  
14 3. Is sufficiently relevant and credible to be accepted as adequate to support (legally  
15 justify) the conclusion reached; and  
16  
17 4. Otherwise meets all requirements of law.  
18  
19

20 **Establishment of Revised Just Values in Administrative Reviews**

21 The Board or special magistrate is required to establish a revised just value under either  
22 of the two following conditions:  
23

- 24 1. The property appraiser does not establish a presumption of correctness for the  
25 assessment and the hearing record contains competent substantial evidence for  
26 establishing a revised just value as described above; or  
27  
28 2. The petitioner overcomes a presumption of correctness established by the property  
29 appraiser and the hearing record contains competent substantial evidence for  
30 establishing a revised just value as described above.  
31

32 Within their scope of authority, the Board or special magistrate shall establish a revised  
33 just value based upon the competent substantial evidence for establishing a revised just  
34 value. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House  
35 Bill 521).  
36

37 Prior to 2009 and the adoption of House Bill 521, Section 194.301, F.S., provided that  
38 the Board may establish the assessment when authorized.  
39

40 However, the current statute, effective for administrative reviews beginning in 2009,  
41 specifically requires that the Board shall establish the just value when authorized by

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1 law. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill  
2 521).

3  
4 *“In establishing a revised just value, the board or special magistrate is not restricted to  
5 any specific value offered by one of the parties.”* See Rule 12D-9.027(2)(b)3.a., F.A.C.

6  
7 In establishing a revised just value when required by law, Boards and special  
8 magistrates are not required, and are not authorized, to complete an independent  
9 valuation approach.

10  
11 The establishment of a revised just value does not require the evidence necessary to  
12 complete an independent valuation approach.

13  
14 The establishment of a revised just value only requires enough evidence to legally  
15 justify making an adjustment to the property appraiser’s original just valuation.

16  
17 In establishing a revised just value when required by law, Boards and special  
18 magistrates are authorized to make the necessary calculations.

### 19 20 21 **Sequence of General Procedural Steps**

22 This section sets forth below a sequence of general procedural steps for Boards and  
23 special magistrates to follow in administrative reviews of just valuations in order to fulfill  
24 the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.

25  
26 This sequence of steps applies to: the consideration of evidence, the development of  
27 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

28  
29 *“The board or special magistrate shall not be required to make, at any time during a  
30 hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See  
31 Rule 12D-9.025(9), F.A.C.

32  
33 *“The board or special magistrate has the discretion to determine whether to make such  
34 determinations during a hearing or to consider the petition and evidence further after the  
35 hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.

36  
37 In following this sequence of steps, Boards or special magistrates must also meet the  
38 requirements of Rule 12D-9.025(1), F.A.C., which are the following:

- 39  
40 \* Review the evidence presented by the parties;  
41  
42 \* Determine whether the evidence presented is admissible;

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- 1
- 2 \* Admit the evidence that is admissible; and
- 3
- 4 \* Identify the evidence presented to indicate that it is admitted or not admitted.
- 5
- 6 The sequence of general procedural steps presented below is based on Rule 12D-
- 7 9.027(2), F.A.C. The sequence of general procedural steps is as follows.
- 8
- 9 1. Consider the admitted evidence presented by the parties.
- 10
- 11 2. Identify and consider the essential characteristics of the petitioned property based on
- 12 the admitted evidence and the factors in Section 193.011, F.S.
- 13
- 14 3. Identify the appraisal methodology used by the property appraiser in developing his
- 15 or her just valuation of the petitioned property, and consider this appraisal
- 16 methodology in light of the essential characteristics of the petitioned property.
- 17
- 18 4. Determine whether the admitted evidence proves by a preponderance of the
- 19 evidence that the property appraiser's methodology complies with Section 193.011,
- 20 F.S., and professionally accepted appraisal practices, including mass appraisal
- 21 standards, if appropriate.
- 22
- 23 5. Determine whether the property appraiser's appraisal methodology is appropriate
- 24 and whether the property appraiser established a presumption of correctness for the
- 25 assessment.
- 26
- 27 a) The property appraiser's just valuation methodology is not appropriate and a
- 28 presumption of correctness is not established unless the admitted evidence
- 29 proves by a preponderance of the evidence that the property appraiser's just
- 30 valuation methodology complies with Section 193.011, F.S., and professionally
- 31 accepted appraisal practices, including mass appraisal standards, if appropriate.
- 32
- 33 b) The property appraiser's just valuation methodology is appropriate and the
- 34 presumption of correctness is established only when the admitted evidence
- 35 proves by a preponderance of the evidence that the property appraiser's just
- 36 valuation methodology complies with Section 193.011, F.S., and professionally
- 37 accepted appraisal practices, including mass appraisal standards, if appropriate.
- 38
- 39 6. If the Board or special magistrate determines that a presumption of correctness is
- 40 established, the Board or special magistrate must then determine whether the
- 41 admitted evidence proves by a preponderance of the evidence that:
- 42

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- 1 a) The property appraiser's just valuation does not represent just value; or
- 2
- 3 b) The property appraiser's just valuation is arbitrarily based on appraisal practices
- 4 that are different from the appraisal practices generally applied by the property
- 5 appraiser to comparable property within the same county. In making this
- 6 determination, the Board or special magistrate may consider any admitted
- 7 evidence regarding assessments among comparable properties within
- 8 homogeneous areas or neighborhoods.
- 9

10 7. If the Board or special magistrate determines that one or both of the conditions  
11 specified under Step 6 exist, the presumption of correctness is overcome.

12

13 8. If the property appraiser does not establish a presumption of correctness, or if the  
14 presumption of correctness is overcome, the Board or special magistrate must  
15 determine whether the hearing record contains competent, substantial evidence of  
16 just value which cumulatively meets the criteria of Section 193.011, F.S., and  
17 professionally accepted appraisal practices.

18

19 a) If the hearing record contains competent, substantial evidence for establishing a  
20 revised just value, the Board or an appraiser special magistrate must establish a  
21 revised just value based only upon such evidence. In establishing a revised just  
22 value, the Board or special magistrate is not restricted to any specific value  
23 offered by one of the parties.

24

25 b) If the hearing record lacks competent, substantial evidence for establishing a  
26 revised just value, the Board or special magistrate must remand the assessment  
27 to the property appraiser with appropriate directions for establishing just value.  
28 The property appraiser is required to follow these directions.

29

30 9. If the property appraiser establishes a presumption of correctness as described in  
31 Step 5 above and that presumption of correctness is not overcome as described in  
32 Step 6 above, the assessment stands.

### 33

### 34

### 35 **Chronological Overview of Subsection 193.011(8), F.S.**

36 In 1963, the initial version of the first seven just valuation factors was were-enacted,  
37 effective January 1, 1964. See Chapter 63-250, Laws of Florida, creating Section 193.021,  
38 F.S., which was re-numbered in 1969 as Section 193.011, F.S., by Chapter 69-55, Laws of  
39 Florida.

40

41 In 1965, the Florida Supreme Court held that just value was synonymous with fair  
42 market value and defined fair market value as: "the amount a purchaser willing but not

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1 obliged to buy, would pay to one willing but not obliged to sell.” See Walter v. Schuler, 176  
2 So.2d 81 (Fla. 1965).

3  
4 NOTE: The eighth just valuation criterion did not exist at the time of Walter v. Schuler.  
5 The Legislature can override decisional law. See Dept. of Environmental Protection v.  
6 Contractpoint Florida Parks, 986 So.2d 1260, 1269 (Fla. 2008).

7  
8 Then, in 1967, the Legislature enacted the first part of the eighth criterion as subsection  
9 193.021(8), F.S., in the form presented below. See Chapter 67-167, Laws of Florida,  
10 creating Subsection 193.021(8), F.S., which was re-numbered in 1969 as Subsection 193.011(8),  
11 F.S., by Chapter 69-55, 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.*

16  
17 In 1977, the language underlined below was added to subsection 193.011(8), F.S. See  
18 Chapter 67-167, Laws of Florida, creating Subsection 193.021(8), F.S., which was re-numbered  
19 in 1969 as Subsection 193.011(8), F.S., by Chapter 69-55, Laws of Florida.

20  
21 *(8) The net proceeds of the sale of the property, as received by the seller, after*  
22 *deduction of all of the usual and reasonable fees and costs of the sale, including the*  
23 *costs and expenses of financing, and allowance for unconventional or atypical terms*  
24 *of financing arrangements.*

25  
26 In 1979, the language underlined below was added to subsection 193.011(8), F.S. See  
27 Chapter 79-334, Laws of Florida.

28  
29 *(8) The net proceeds of the sale of the property, as received by the seller, after*  
30 *deduction of all of the usual and reasonable fees and costs of the sale, including the*  
31 *costs and expenses of financing, and allowance for unconventional or atypical terms*  
32 *of financing arrangements. When the net proceeds of the sale of any property are*  
33 *utilized, directly or indirectly, in the determination of just valuation of realty of the*  
34 *sold parcel or any other parcel under the provisions of this section, the property*  
35 *appraiser, for the purposes of such determination, shall exclude any portion of such*  
36 *net proceeds attributable to payments for household furnishings or other items of*  
37 *personal property.*

38  
39 Through 2018, no further amendments have been made to subsection 193.011(8), F.S.

40  
41 In 1984, when reviewing a 1980 assessment, a federal appellate court found that just  
42 value as determined under subsection 193.011(8), F.S., does not represent full market



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1 value. See Louisville and Nashville Railroad Co. v. Department of Revenue, State of Fla., 736  
2 F.2d 1495 (11th Cir. (Fla.) July 24, 1984).

3  
4 In 1982, the Legislature enacted subsection 192.001(18), F.S. See Chapter 82-388, Laws  
5 of Florida.

6  
7 \* This statute provides minimum reporting standards for a property appraiser's  
8 complete submission of an assessment roll to the Department of Revenue. These  
9 standards include the following for adjustments made by the property appraiser  
10 under subsection 193.011(8), F.S:

11  
12 *"(18) 'Complete submission of the roll' includes, but is not necessarily limited*  
13 *to,...an accurate tabular summary by property class of any adjustments made to*  
14 *recorded selling prices or fair market value in arriving at assessed value, as*  
15 *prescribed by department rule;..." (underlined emphasis added).*

16  
17 Rule 12D-8.002(4), F.A.C., which implements subsection 192.001(18), F.S., was  
18 adopted effective September 30, 1982.

19  
20 \* Rule 12D-8.002(4), F.A.C., provides the following requirement for submittals of  
21 preliminary assessment rolls to the Department:

22  
23 *"(4) Accompanying the assessment roll submitted to the Executive Director shall be,*  
24 *on a form provided by the Department, an accurate tabular summary by property*  
25 *class of any adjustments made to recorded selling prices or fair market value in*  
26 *arriving at assessed value. Complete, clear, and accurate documentation for each*  
27 *adjustment under section 193.011(8), F.S., exceeding fifteen percent shall*  
28 *accompany this summary detailing how that percentage adjustment was calculated.*  
29 *This documentation shall include individual data for all sales used and a narrative on*  
30 *the procedures used in the study." (underlined emphasis added)*

31  
32 It is important to note that this rule does not, in any way, indicate that property  
33 appraisers are required to apply any particular eighth criterion adjustment. Though not  
34 required by law, in their actual practice, property appraisers do make across-the-board,  
35 eighth criterion adjustments in arriving at their annual just values of real property.

36  
37 \* The statement in the rule regarding 15 percent is merely a reporting threshold that, if  
38 exceeded, would require a documented research study to justify the reported  
39 adjustment.

40

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1 To facilitate annual reporting of eighth criterion adjustments in accordance with  
2 subsection 192.001(18), F.S., and Rule 12D-8.002(4), F.A.C., the Department of  
3 Revenue developed Form DR-493 for each property appraiser to use.

4  
5 \* Each year, using Form DR-493, property appraisers are required to report to the  
6 Department the adjustments made by the property appraiser to recorded selling  
7 prices or fair market value for each parcel within each of the 18 real property use  
8 code groups listed on the form.

9  
10 \* The Forms DR-493 ~~that are~~ completed and certified annually by each Property  
11 Appraiser are available by clicking on “Assessment Roll Evaluation and Approval” at:  
12 the following link:  
13 <http://floridarevenue.com/property/Pages/DataPortal.aspx>  
14  
15

### **Operation of the Eighth Criterion Under Florida Law**

16 Subsection 193.011(8), F.S., requires proper consideration of the “net proceeds of  
17 sale,” regardless of whether ~~an actual sale of the property has occurred~~ the property was  
18 sold, stating in pertinent part:  
19

20  
21 “When the net proceeds of the sale of any property are utilized, directly or indirectly, in  
22 the determination of just valuation of realty of the sold parcel or any other parcel under  
23 the provisions of this section...”  
24

- 25 • This provision clearly shows legislative intent for the net proceeds of sale to be  
26 applied in just valuations of both sold parcels and unsold parcels.  
27

28 In Oyster Pointe Condo. Assoc., Inc. v. Nolte, 524 So.2d 415, 418 (Fla. 1988), the  
29 Florida Supreme Court, in holding that timeshare marketing costs were not (under  
30 timeshare statutes at that time) part of the “reasonable fees and costs of sale” under  
31 section 193.011(8), tellingly stated as follows:  
32

33 “However, as we read section 193.011(8), these costs are not among the “reasonable  
34 fees and costs of sale” contemplated by the legislature to be excluded from the ad  
35 valorem appraisal process.” (underlined emphasis added)  
36

- 37 • This holding is notable because it explains legislative intent for the costs of sale to be  
38 “excluded from the ad valorem appraisal process” without exception.  
39

- 40 • This holding aligns with uniform application of the cost of sale factor, without regard  
41 to whether the property was sold or to the approach used to value the property.  
42

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1 Further, a failure to uniformly apply the “net proceeds of sale” factor, to both sold and  
2 unsold parcels, would be selective reappraisal.

3  
4 The text, *Mass Appraisal of Real Property*, published in 1999 by the International  
5 Association of Assessing Officers, page 315, describes the highly undesirable practice  
6 of selective reappraisal as follows:

7  
8 “*The reliability of sales ratio statistics depends on unsold parcels being appraised in the*  
9 *same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio*  
10 *results, possibly rendering them useless. Equally important, selective reappraisal of*  
11 *sold parcels (“sales chasing”) is a serious violation of basic appraisal uniformity and is*  
12 *highly unprofessional.”* (underlined emphasis added)

13  
14 Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See  
15 *Allegheny Pittsburgh Coal Co. v. County Commissioner*, 488 U.S. 336 (1989).

16  
17 ~~—See *Turner v. Tokai Financial Services, Inc.*, 767 So.2d 494 (Fla. 2nd DCA 2000) review~~  
18 ~~denied 780 So.2d 916 (Fla. 2001).~~

19  
20 ~~\* However, the statute does not require the property appraiser to select the value~~  
21 ~~generated by the application of Subsection 193.011(8), F.S., and apply it in a blanket~~  
22 ~~fashion to all assessments. See *Turner v. Tokai Financial Services, Inc.*, 767 So.2d 494~~  
23 ~~(Fla. 2nd DCA 2000) review denied 780 So.2d 916 (Fla. 2001).~~

24  
25 ~~There is no legal requirement that the net proceeds of sale constitute the deciding factor~~  
26 ~~in just valuation. See *In re Steffen*, 342 B.R. 861 (Bkrctcy. M.D. Fla. 2006).~~

27  
28 ~~The use of net sales price alone, without considering and weighing the other factors, is~~  
29 ~~legally insufficient to constitute compliance with the mandate of Section 193.011, F.S.~~  
30 ~~See Florida Attorney General’s Opinion AGO 77-106, September 29, 1977.~~

31  
32 At least two other court decisions have approved an adjustment for the eighth criterion  
33 in just valuations. See *Roden v. GAC Liquidating Trust*, 462 So.2d 92 (Fla. 2nd DCA 1985).  
34 Also, see *Southern Bell Telephone and Telegraph Co. v. Broward County*, 665 So.2d 272 (Fla.  
35 4th DCA 1995) review denied 673 So.2d 30 (Fla. 1996), stating the following in an example:  
36 “*Subtracting the \$15,000 (cost of sale) from the \$100,000 selling price leaves a net value of*  
37 *\$85,000. We find no impropriety in using this approach to valuation.”*

38  
39 Under Florida law, property appraisers are authorized, but are not required, to make  
40 eighth criterion adjustments in real property just valuations.

41

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1 \* Though not required by law, in arriving at their annual just values property  
2 appraisers make across-the-board adjustments to recorded selling prices or fair  
3 market value of real property to reflect their consideration of subsection 193.011(8),  
4 F.S. See Department of Revenue Form DR-493 reported each year.  
5

6 At least two court decisions have noted the practice of making across-the-board  
7 adjustments to real property for the eighth criterion. See Louisville and Nashville Railroad  
8 Co. v. Department of Revenue, State of Fla., 736 F.2d 1495 (11<sup>th</sup> Cir.(Fla.) July 24, 1984), and  
9 Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272 (Fla. 4th DCA  
10 1995) review denied 673 So.2d 30 (Fla. 1996).  
11

12 Each year, property appraisers are required to lawfully report to the Department of  
13 Revenue the lawful adjustments the property appraiser made to recorded selling prices  
14 or fair market value of real property in consideration of subsection 193.011(8), F.S. See  
15 Subsection 192.001(18), F.S.; Rule 12D-8.002(4), F.A.C.; and Form DR-493 reported each year.  
16

17 Property appraisers report these adjustments using Form DR-493, and are required to  
18 report the adjustments made to recorded selling prices or fair market values within each  
19 of the real property use code groups listed on the form.  
20

21 \* The property appraiser lawfully making and reporting these adjustments is a  
22 professionally accepted appraisal practice under section 194.301, F.S.  
23

24 \* See Forms DR-493 that are certified and reported by property appraisers each year,  
25 available by clicking on "Assessment Roll Evaluation and Approval" at: ~~the following~~  
26 ~~link:~~  
27 <http://floridarevenue.com/property/Pages/DataPortal.aspx>  
28

29 The property appraiser is responsible for lawfully determining whether adjustments for  
30 the eighth factor are necessary for just valuation and is responsible for lawfully  
31 determining and reporting the amount of the adjustments made.  
32

33 The Department of Revenue does not determine whether the property appraiser should  
34 make adjustments in consideration of subsection 193.011(8), F.S., and does not  
35 determine the amount of any lawful adjustments made by the property appraiser.  
36

37 The Department administers a reporting threshold that requires justifying research,  
38 data, analysis, and documentation from the property appraiser under certain conditions.  
39 See Rule 12D-8.002(4), F.A.C.  
40

1 **Other Examples of Reporting Across-the-Board Eighth Criterion Adjustments**

2 An example of an actual reported practice of making across-the-board, eighth criterion  
3 adjustments is contained in a county property appraiser's 2010 Mass Appraisal Report  
4 (authored by Tim Wilmath, MAI, Director of Valuation).

5  
6 \* This 2010 Mass Appraisal Report was presented as evidence at Board hearings.

7  
8 \* Below are excerpts from this report explaining how across-the-board, eighth criterion  
9 adjustments are made to all property without regard to whether a property was sold  
10 and without regard to which valuation approach or technique was used.

11  
12 *"The property appraiser considers the 8th criterion by adjusting all sale prices  
13 downward by 15% to reflect costs of sale. This downward adjustment is made before  
14 the sales are used to value the population of properties."*

15  
16 *"Each year, the property appraiser's office submits Form DR-493 to the Department  
17 of Revenue, indicating the costs of sale adjustments that were made to sale prices.  
18 As indicated below, the...County Property Appraiser's office adjusts recorded sale  
19 prices by 15% in arriving at assessed values."*

20  
21 *"In the cost/market hybrid approach, the costs of sale adjustment is applied by  
22 deducting 15% from sale prices before calculating the appropriate base rate. For  
23 example, after deducting land value and extra feature value, the contributory value  
24 of an average quality single family home based on 4th quarter sales, is \$54.50 per  
25 square foot. Deducting 15% results in a base rate for single family homes of \$46.00  
26 per square foot (rounded). This same exercise is conducted for every property type.  
27 Once all base rate adjustments have been made, a review of sales ratios is  
28 conducted to ensure the assessments are at or below 85% of sale prices."*

29  
30 *"A more common approach to deducting the 15% costs of sale, is to apply rates and  
31 factors that achieve an assessment ratio of 85% or less. By ensuring that  
32 assessments are at or below 85% of sales prices, the 15% costs of sale adjustment  
33 is effectively factored into assessments. When there are no sales of a given property  
34 type for a given tax year, the rates extracted from Marshall Valuation Service are  
35 adjusted to reflect the 15% costs of sale. For all property types, whether sales exist  
36 or not, rates are adjusted to reflect the 15% costs of sale."*

37  
38 *"For land valuation, the goal is a land assessment to vacant sale ratio of 85% or  
39 less. When few or even no vacant land sales exist, ratios are reviewed to ensure the  
40 estimated land value for any given neighborhood results in an improved  
41 assessment-to-sale ratio of 85% or less."*

42

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1        *“In the sales comparison approach, sale prices are adjusted by 15% before*  
2        *adjustments for various factors are applied. This adjustment is evident in the screen*  
3        *shot below.”*

4  
5        *“The income models created by our office are designed to arrive at values that are*  
6        *approximately 85% or less of gross sale prices of similar properties.”*

7  
8        *“For all property types, the property appraiser strives to achieve assessed values*  
9        *that are at or below 15% of the prior year's selling prices. This is evident in the graph*  
10       *below that illustrates the difference between assessments and selling prices over the*  
11       *past 6 years.”*

12  
13       In another example of an actual reported practice, a document produced in 2011 by  
14       another Florida property appraiser contains the following description of how his office  
15       applies across-the-board, eighth criterion adjustments in all three approaches to just  
16       valuation of all real property, without regard to whether the property was sold.

17  
18       *“In the Office of the...County Property Appraiser, all recorded sales of real property*  
19       *are reduced by 15% to reflect the seller's typical “costs of sale.” Thus, only 85% of*  
20       *the recorded sales price is recognized by the Property Appraiser. This adjusted*  
21       *sales prices (reflecting the seller's “net proceeds”) are then entered into the Property*  
22       *Appraiser's Computer Assisted Mass Appraisal (CAMA) program, along with other*  
23       *data pertaining to the remaining seven statutory criteria enumerated in section*  
24       *193.011, Florida Statutes. From this mass compilation of data involving thousands of*  
25       *entries, the Property Appraiser's computer system generates a market value*  
26       *assessment for the particular kind of property. This is how value indications of real*  
27       *property are developed. The CAMA system, therefore, determines a real property*  
28       *assessment which is based upon the consideration and use, where appropriate, of*  
29       *all eight factors and complies with the requirements of §193.011.”*

30  
31       *“The CAMA-generated assessment is neither a sales comparison approach to*  
32       *determining value nor an income capitalization approach to value nor a cost less*  
33       *depreciation approach to value. Rather, it is a hybrid of all three appraisal methods*  
34       *in which the eighth criteria is properly considered and used when deriving just*  
35       *value.”*

### **The Eighth Criterion in Real Property Administrative Reviews**

36  
37  
38       The eighth criterion is one of the statutory criteria in section 193.011, F.S., which  
39       Boards and special magistrates must properly consider in administrative reviews of real  
40       property just valuations under section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.  
41  
42

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1 Boards and special magistrates should determine whether the property appraiser has  
2 reported to the Department an eighth criterion adjustment for the petitioned real  
3 property type and whether the Department has accepted the reported adjustment.

4  
5 \* This determination can be made by reviewing the Form DR-493 submitted annually  
6 by each property appraiser and accepted by the Department.

7  
8 \* These documents are available by clicking on “Assessment Roll Evaluation and  
9 Approval” at: ~~the following link:~~  
10 <http://floridarevenue.com/property/Pages/DataPortal.aspx>

11  
12 \* The property appraiser lawfully making and reporting these adjustments is a  
13 professionally accepted appraisal practice under section 194.301, F.S.

14  
15 In determining whether the property appraiser’s just valuation complies with section  
16 193.011, F.S., and professionally accepted appraisal practices, the Board or special  
17 magistrate is authorized to ask related questions to enable the parties to provide the  
18 evidence necessary for making this determination. See Rule 12D-9.025(7)(b), F.A.C.

19  
20 \* To help determine how the property appraiser properly considered the eighth  
21 criterion in developing the just value presented by the property appraiser, the Board  
22 or special magistrate should ask questions regarding the eighth criterion  
23 adjustments reported on the Form DR-493.

24  
25 \* The Board or special magistrate should also ask questions regarding whether the  
26 property appraiser applied, in arriving at his or her just value for the petitioned  
27 property, the same eighth criterion adjustment reported for the subject property  
28 use code group on the Form DR-493.

29  
30 \* If, in arriving at his or her just value for the petitioned property, the property  
31 appraiser applied an eighth criterion adjustment that is different from the  
32 adjustment that he or she applied to parcels in the subject use code group as  
33 reported on the Form DR-493, the Board or special magistrate should consider  
34 whether the appraisal practice applied to the subject property is arbitrary under  
35 subparagraph 194.301(2)(a)3., F.S.

36  
37 \* If the reported and accepted Form DR-493 is not voluntarily presented as evidence,  
38 the Board or special magistrate should request a copy of such Form DR-493 from  
39 the property appraiser.

40

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1 NOTE: Under subsection 194.301(1), F.S., a Board petitioner is entitled to a  
2 determination by the Board or special magistrate of the appropriateness of the appraisal  
3 methodology used in making the assessment.

4  
5 \* The just value of property must be determined by an appraisal methodology that  
6 complies with the criteria of section 193.011, F.S., and professionally accepted  
7 appraisal practices.

8  
9 Professionally accepted appraisal practices are recognized by the Florida Legislature as  
10 a statutory just valuation criterion that must be properly considered by Boards and  
11 special magistrates in administrative reviews of assessments. See section 194.301, F.S.

12  
13 \* Florida law now requires Boards and special magistrates to employ both section  
14 193.011, F.S., and professionally accepted appraisal practices, in reviewing just  
15 valuations including revising just valuations when required by section 194.301, F.S.

16  
17 Boards and special magistrates must avoid using arbitrary appraisal practices as  
18 described in subparagraph 194.301(2)(a)3., F.S.

19  
20 Below are examples of how the Board or special magistrate should properly consider  
21 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**

22  
23  
24  
25  
26 1. The Board or special magistrate determines from the accepted Form DR-493 that  
27 the property appraiser has reported and the Department has accepted a certain  
28 percentage adjustment for the eighth criterion for all real property within the  
29 petitioned property use code group.

30  
31 2. The Board or special magistrate determines from the admitted evidence that the  
32 property appraiser has not made an eighth criterion adjustment in arriving at the just  
33 value presented by the property appraiser for the petitioned property.

34  
35 \* An example of such evidence would be testimonial or documentary evidence  
36 from the property appraiser sufficient to prove that he or she did not make an  
37 eighth criterion adjustment in developing the just value presented by the property  
38 appraiser for the petitioned property.

39  
40 3. In such case, the Board or special magistrate should make, to the just value  
41 presented by the property appraiser for the petitioned property, the same eighth



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1 criterion adjustment reported by the property appraiser for the subject use code  
2 group on Form DR-493.

3  
4 NOTE: The Board or special magistrate must avoid double-counting this adjustment.  
5 In cases where the property appraiser has already made, in arriving at his or her  
6 presented just value for the petitioned property, the same eighth criterion adjustment  
7 reported on Form DR-493, the Board or special magistrate must not make an  
8 additional eighth criterion adjustment to the property appraiser's presented just value  
9 for the petitioned property.

### Example of When a Board or Special Magistrate Should NOT Make an Eighth Criterion Adjustment to a Just Value Presented by the Property Appraiser

- 10  
11  
12  
13  
14 1. The Board or special magistrate determines from the accepted Form DR-493 that  
15 the property appraiser has reported and the Department has accepted a certain  
16 percentage adjustment for the eighth criterion for all real property within the  
17 petitioned property use code group.  
18  
19 2. The Board or special magistrate determines from the admitted evidence that the  
20 property appraiser has already made, in arriving at the just value presented by the  
21 property appraiser for the petitioned property, an eighth criterion adjustment that is  
22 equal to the adjustment reported for the subject use code group on Form DR-493.  
23  
24 \* An example of such evidence would be testimonial or documentary evidence  
25 from the property appraiser sufficient to prove that he or she did make, in  
26 developing the just value presented by the property appraiser for the petitioned  
27 property, an eighth criterion adjustment equal to the adjustment reported for the  
28 subject use code group on Form DR-493.  
29  
30 3. The Board or special magistrate must avoid repeating the eighth criterion adjustment  
31 that has already been made by the property appraiser in arriving at the just value  
32 presented by the property appraiser for the petitioned property.  
33  
34

### Considering the Eighth Criterion and Evidence of a Real Property Sale

35 When considering admitted evidence of an arm's length sale of real property, the Board  
36 or special magistrate must determine whether an eighth criterion adjustment should be  
37 made to the presented sale price under sections 194.301 and 193.011, F.S.  
38  
39

- 40 \* The Board or special magistrate must avoid double-counting this adjustment and not  
41 repeat any adjustment amount that has already been made to the presented sale

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1 price, whether such adjustment amount was made as a dollar amount or a  
2 percentage amount.

3  
4 \* The Board or special magistrate is not precluded from making an eighth criterion  
5 adjustment to the presented, arm's length sale price when such adjustment would  
6 not result in double-counting and when such adjustment is justified by sufficiently  
7 relevant and credible evidence.

8  
9 \* In considering whether an eighth criterion adjustment to the presented sale price is  
10 justified, the Board or special magistrate must first determine the basis or origin of  
11 the presented sale price and determine whether the presented sale price has  
12 already been adjusted for the eighth criterion.

13  
14 \* The Board or special magistrate should make, to the presented arm's length sale  
15 price, the eighth criterion adjustment that is justified by sufficiently relevant and  
16 credible evidence when such adjustment would not result in double-counting.

17  
18 \* In considering whether an eighth criterion adjustment to the presented sale price is  
19 justified, the Board or special magistrate should consider the adjustment lawfully  
20 made and lawfully reported by the property appraiser on Form DR-493 for the  
21 property use code group of the sold property.

22  
23 \* If the Board or special magistrate determines that the arm's length sale price  
24 presented by one of the parties is equal to the recorded selling price, the Board or  
25 special magistrate should make, to such sale price, a percentage adjustment for the  
26 eighth criterion that is equal to the percentage adjustment lawfully made and  
27 reported by the property appraiser on Form DR-493 for the property use code group  
28 of the sold property.

29  
30 \* If the presented sale price is determined to be different from the recorded selling  
31 price and if an eighth criterion adjustment would not result in double-counting, the  
32 Board or special magistrate should make, to such presented sale price, an eighth  
33 criterion adjustment that results in consistency with the adjustment lawfully made  
34 and reported by the property appraiser on Form DR-493 for the property use code  
35 group of the sold property.

36  
37 NOTE: If a party believes an overall eighth criterion adjustment greater than that  
38 reported on Form DR-493 is justified for a particular sale, the party is responsible for  
39 presenting relevant and credible evidence in support of that belief.

40

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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. ~~See Turner~~  
37 ~~v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000) review denied 780 So.2d~~  
38 ~~916 (Fla. 2001).~~  
39

40 \* When an actual sale of the property has not occurred, the appraiser must, in arriving  
41 at just valuation, place himself or herself in the position of the parties to a  
42 hypothetical sale. See Southern Bell Telephone and Telegraph Co. v. Dade County, 275

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1 So.2d 4 (Fla. 1973) and Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd  
2 DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

3  
4 In long-established and accepted practice, Florida property appraisers routinely apply  
5 across-the-board, eighth criterion adjustments in just valuations of real property, without  
6 regard to the valuation approach or technique used or whether the property was sold.

7  
8 \* These adjustments are certified and reported annually by property appraisers on  
9 Forms DR-493, which are available on the Department's website at:  
10 [ftp://sdrftp03.dor.state.fl.us/DR-493\\_8th\\_Criterion/](ftp://sdrftp03.dor.state.fl.us/DR-493_8th_Criterion/)

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  
14 Railroad Co. v. Department of Revenue, State of Fla., 736 F.2d 1495 (11<sup>th</sup> Cir. (Fla.) July 24,  
15 1984), and Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272  
16 (Fla. 4th DCA 1995) review denied 673 So.2d 30 (Fla. 1996).

17  
18 To not apply, when otherwise warranted, the eighth criterion in an administrative review  
19 because the property has not been sold, or based on the valuation approach or  
20 technique used, would result in an arbitrary appraisal practice under subparagraph  
21 194.301(2)(a)3., F.S.

22  
23 The case of Bystrom v. Equitable Life Assurance Society, 416 So.2d 1133 (Fla. 3<sup>rd</sup> DCA  
24 1982) has been cited in support of the proposition that the eighth criterion does not  
25 apply to valuation approaches other than the sales comparison approach or unless the  
26 subject property was sold.

27  
28 \* Such proposition is not supported by current law and is contrary to the long-  
29 established, professionally accepted appraisal practice employed by property  
30 appraisers of making across-the-board, eighth criterion adjustments without regard  
31 to whether the property was sold or to which valuation approach is used.

32  
33 \* The Bystrom case reviewed a 1978 assessment based on 1977 statutes. Later, in  
34 1979, the eighth criterion was amended to add a personal property component. See  
35 Chapter 79-334, Laws of Florida.

36  
37 \* The eighth criterion now requires proper consideration of an adjustment for both  
38 costs of sale and any personal property. See subsection 193.011(8), F.S.

39  
40 \* Bystrom reflects no record evidence of the professionally accepted appraisal  
41 practice established long ago by property appraisers of making across-the-board,

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1 eighth criterion adjustments to all sales and to all parcels regardless of whether a  
2 parcel was sold and regardless of which valuation approach or technique is used.

3  
4 \* Perhaps Bystrom does not reflect such record evidence because it predates the  
5 statutory amendment that now requires the property appraiser to report the  
6 across-the-board, eighth criterion adjustments made by the property appraiser  
7 regardless of whether the property was sold and regardless of the valuation  
8 approach used. See Chapter 82-388, Laws of Florida, creating subsection 192.001(18),  
9 F.S., and see Rule 12D-8.002(4), F.A.C.

10  
11 \* The Bystrom case is clearly distinguishable from current practice and, thus,  
12 generally would not apply in administrative reviews of assessments under  
13 Chapter 194, Part 3, F.S.

14  
15 \* The Bystrom holding has been superseded by section 194.301, F.S., which  
16 precludes arbitrary just valuation practices and provides that all just valuations must  
17 comply with section 193.011, F.S., and professionally accepted appraisal practices.

18  
19 \* The law on which the long-established operation of the eighth criterion is based has  
20 changed substantially since the assessment date in Bystrom.

21  
22 \* The facts in Bystrom reveal that the decision was based on “unconventional or  
23 atypical financing.”

24  
25 \* Thus, the holding in Bystrom is limited to only factual situations where an  
26 adjustment for “unconventional or atypical financing” is the issue. Accordingly,  
27 Bystrom would *not preclude* a typical eighth criterion adjustment, in any valuation  
28 approach, for “usual and reasonable fees and costs of the sale...”

### **Eighth Criterion Applies in Both Mass Appraisal and Single Property Appraisal**

29  
30  
31 Some have argued that the eighth criterion applies only to the mass appraisal of groups  
32 of properties and is inapplicable to a single property analysis such as a Board petition.

33  
34  
35 \* Such argument is not supported in fact or law, and is contrary to the long-  
36 established, professionally accepted appraisal practice employed by property  
37 appraisers of making across-the-board, eighth criterion adjustments without regard  
38 to whether mass appraisal or single property appraisal is used.

39  
40 \* Florida law does not provide for any variation in the applicability of the factors in  
41 section 193.011, F.S., based on whether mass appraisal or single property appraisal  
42 is used.

1  
2 \* To not apply, when otherwise warranted, the eighth criterion in an administrative  
3 review because the assessment is being reviewed using single property analysis  
4 would result in an arbitrary appraisal practice under subparagraph 194.301(2)(a)3.,  
5 F.S.

6  
7 \* In fact, a Florida appellate court has approved an eighth criterion adjustment made  
8 in the just valuation of a single parcel under judicial review. See Roden v. GAC  
9 Liquidating Trust, 462 So.2d 92 (Fla. 2nd DCA 1985).

10  
11  
12 **Properly Considering the Eighth Criterion in Other Valuation Approaches**

13 A previous section in this module addressed the proper consideration of the eighth  
14 criterion when comparable sales are used (the sales comparison approach).

15  
16 \* This section addresses the proper consideration of the eighth criterion in the other  
17 two valuation approaches, the income capitalization approach and the cost less  
18 depreciation approach.

19  
20 When considering a value indicator developed by either of these two valuation  
21 approaches, the Board or special magistrate must determine whether an eighth criterion  
22 adjustment should be made to such value indicator.

23  
24 \* The Board or special magistrate must avoid double-counting this adjustment and  
25 must not repeat any adjustment amount that has already been made, whether such  
26 adjustment amount was made as a dollar amount or a percentage amount.

27  
28 \* The Board or special magistrate is not precluded from making an eighth criterion  
29 adjustment to a value indicator developed by the income capitalization approach or  
30 the cost less depreciation approach when such adjustment would not result in  
31 double-counting and when such adjustment is justified by sufficient evidence.

32  
33 \* In determining whether to make an eighth criterion adjustment to a value indicator  
34 developed by either of these two approaches, the Board or special magistrate must  
35 first determine how such value indicator was developed and determine whether the  
36 indicator has already been adjusted for the eighth criterion.

37  
38 \* The Board or special magistrate should make, to a value indicator developed by the  
39 income capitalization approach or cost less depreciation approach, the eighth  
40 criterion adjustment that is justified by sufficient evidence when this adjustment  
41 would not result in double-counting.

42

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1 \* In determining whether to make an eighth criterion adjustment to such a value  
2 indicator, the Board or special magistrate should consider the adjustment lawfully  
3 made and lawfully reported by the property appraiser on Form DR-493 for the use  
4 code group that contains the use code of the subject property.

5  
6 \* When double-counting would not result, the Board or special magistrate should  
7 make, to a value indicator developed by either of these two approaches, an eighth  
8 criterion adjustment that results in consistency with the adjustment lawfully made  
9 and lawfully reported by the property appraiser on Form DR-493 for the use code  
10 group of the subject property.

11  
12 NOTE: If a party believes an overall eighth criterion adjustment greater than that  
13 reported on Form DR-493 is justified for a particular value indicator, the party is  
14 responsible for presenting relevant and credible evidence in support of that belief.

15  
16 \* Then, the Board or special magistrate is responsible for determining, in accordance  
17 with law, whether the hearing record contains sufficient evidence to justify a higher  
18 overall eighth criterion adjustment to that particular value indicator.

19  
20 As stated previously in this training module, the just value of any personal property must  
21 be excluded from just valuations of real property.

### **~~Homestead Residential Improvement Uninhabitable Due to Hurricane Damage~~**

22  
23  
24  
25 ~~Information on this new law is included in Module 6 because the administrative review  
26 of this tax abatement should be heard by a real estate appraiser special magistrate.~~

27  
28 ~~The 2018 Legislature created section 197.318, F.S., to provide an abatement of taxes,  
29 by a refund, for homestead residential improvements made uninhabitable from damage  
30 or destruction by Hurricane Hermine, Matthew or Irma. The legislation provides that a  
31 claim for abatement is waived unless a property owner files a sworn application with the  
32 property appraiser by March 1, 2019. These amendments are effective March 23, 2018,  
33 are retroactive to January 1, 2016, and expire January 1, 2021. See Chapter 2018-118,  
34 Sections 17, 14, and 63, Laws of Florida (CS/HB 7087). Section 17, containing the  
35 substantive details of this new law, starts on page 20 of the document available at:  
36 <http://laws.flrules.org/2018/118>~~

37  
38 ~~The legislation amended section 194.032, F.S., to provide for value adjustment boards  
39 to hear appeals pertaining to the denial by the property appraiser of tax abatements.  
40 This amendment is effective July 1, 2018. See Chapter 2018-118, Sections 14 and 63, Laws  
41 of Florida (CS/HB 7087). Section 14, containing the substantive details of this new law, starts  
42 on page 18 of the document available at: <http://laws.flrules.org/2018/118>~~

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1  
2 ~~The legislation sets forth detailed definitions and specific steps that must be applied in~~  
3 ~~evaluating and processing an abatement.~~

4  
5 ~~The abatement requires that a property owner file a sworn application with the property~~  
6 ~~appraiser by March 1, 2019. If this application is not made, the claim for abatement is~~  
7 ~~waived. See section 197.318(2)(a) through (c), F.S.~~

8  
9 ~~If the property appraiser determines that the applicant is not entitled to the claimed~~  
10 ~~abatement, the applicant may file a petition with the value adjustment board, pursuant to~~  
11 ~~section 194.011(3), F.S., requesting that the abatement be granted. See section~~  
12 ~~197.318(2)(d), F.S.~~

13  
14 ~~If the property appraiser determines that the applicant is entitled to an abatement, the~~  
15 ~~property appraiser shall issue an official statement to the tax collector. See section~~  
16 ~~197.318(2)(d), F.S. The statement must contain:~~

- 17  
18 ~~• The number of days the residential improvement was rendered uninhabitable in the~~  
19 ~~year the hurricane occurred (must be at least 30 days)~~  
20 ~~• The January 1 just value of the residential parcel~~  
21 ~~• The post disaster just value of the residential parcel~~  
22 ~~• The percent change in value~~

23  
24 ~~When the tax collector receives this statement from the property appraiser, the tax~~  
25 ~~collector will calculate the abatement and process the refund. See section 197.318(3), F.S.~~

26  
27 ~~The Department has adopted forms for the abatement process. See Emergency Rule~~  
28 ~~12DER18-05, "Forms for Abatement of Taxes for Homestead Residential Improvements~~  
29 ~~Damaged or Destroyed by Hurricanes Hermine, Matthew, or Irma," adopting:~~

- 30  
31 ~~• Form DR-463, Application for Abatement of Taxes for Homestead Residential~~  
32 ~~Improvements~~  
33 ~~• Form DR-486H, Petition to the Value Adjustment Board for Abatement of Taxes~~  
34 ~~• Form DR-485H, Decision of the Value Adjustment Board for Abatement of Taxes~~  
35 ~~Petition~~

### **Assessment of Multiple Parcel Buildings**

36  
37  
38 ~~Legislation enacted in 2018 created section 193.0237, F.S., to provide definitions and a~~  
39 ~~methodology for the assessment of multiple parcel buildings. The statute provides that~~  
40 ~~the just value of land upon which a multiple parcel building is located, regardless of~~  
41 ~~ownership, may not be separately assessed and must be allocated among, and~~  
42



1 included in, the just value of all the parcels in the multiple parcel building. This  
2 amendment applies to assessments beginning with the 2018 tax roll. See Chapter 2018-  
3 118, Section 8, Laws of Florida (CS/HB 7087). Section 8, containing this new statutory text,  
4 starts on page 16 of the document available at: <http://laws.flrules.org/2018/118>  
5

6 **(NEW) Appraisal by Special Magistrate May Not Be Submitted as**  
7 **Evidence**

8 Legislation enacted in 2020 amended section 194.035, F.S. to provide an appraisal  
9 performed by a special magistrate is not permitted as evidence in a hearing before a  
10 value adjustment board for which the special magistrate serves. An appraisal may not  
11 be submitted as evidence to a value adjustment board in any year that the person who  
12 performed the appraisal serves as a special magistrate to that value adjustment board.  
13 See Chapter 2020-10, Section 4, Laws of Florida, effective July 1, 2020.  
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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
- ~~(NEW) Assessment of Certain Property Damaged or Destroyed by Hurricane Michael in 2018~~

#### **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

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- 1 • Identify when the Board or special magistrate is required or is NOT required to make
- 2 determinations such as findings, conclusions, or decisions
- 3 • Identify and apply the sequence of general procedural steps for administrative
- 4 reviews of classified use valuations
- 5 • Recognize how to apply the preponderance of the evidence standard of proof in
- 6 administrative reviews of classified use valuations
- 7 • Identify the alternative actions required when a presumption of correctness was not
- 8 established, or was established but later was overcome
- 9 • Identify and apply the elements of the definition of competent substantial evidence
- 10 for establishing a revised classified use value
- 11 • Recognize the conditions under which a Board or special magistrate is required to
- 12 establish a revised classified use value
- 13 • Identify and apply the definition of assessed value
- 14 • Recognize and apply the statutory criteria for the assessed valuation of homestead
- 15 property
- 16 • Recognize and apply the statutory criteria for the assessed valuation of non-
- 17 homestead property
- 18 • Recognize differences in administration of limitations on non-homestead residential
- 19 property with nine or fewer units and other non-homestead property
- 20 • Identify and apply the sequence of general procedural steps for administrative
- 21 reviews of assessed valuations of limited increase properties
- 22 • Recognize how to apply the preponderance of the evidence standard of proof in
- 23 administrative reviews of assessed valuations of limited increase properties
- 24 • Identify and apply the elements of the definition of competent substantial evidence
- 25 for establishing a revised assessed value
- 26 • Recognize the conditions under which a Board or special magistrate is required to
- 27 establish a revised assessed value

### PART 1

#### **Overview of Classified Use Valuation**

33 “Classified use value” means an annual determination of the value of property that is  
34 assessed solely based on character or use, without regard to the property’s highest and  
35 best use.

36  
37 Classified use valuations are provided in Section 4(a), (b), and (e), Article VII, of the  
38 Florida Constitution (agricultural land, noncommercial recreational land, high-water  
39 recharge, conservation land, historic property) and in Section 4(j), Article VII of the State  
40 Constitution (working waterfront properties).

41  
42 NOTE: Legislation has not been enacted to implement assessment exclusions for  
43 residential improvements for resistance to wind damage under Section 4(i), Article VII,  
44 of the Florida Constitution.

45

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1 Except for working waterfront property, the statutory criteria for valuation of classified  
2 use property are provided in Chapter 193, Part 2, F.S.

3  
4 The statutory criteria for working waterfront property are set forth in Section 4(j), Article  
5 VII, of the Florida Constitution.

### 6 7 8 **Statutory Criteria for Valuing Different Types of Classified Property**

9 Statutory criteria for the following types of property classifications are presented below.

#### 10 11 Types of Property Classifications

- 12 • Agricultural Property
- 13 • Pollution Control Devices
- 14 • Noncommercial Recreational and Conservation Lands
- 15 • Historic Property
- 16 • High-water Recharge Property
- 17 • Working Waterfront Property
- 18 • Renewable Energy Source Devices

### 19 20 21 **Statutory Criteria for Valuing Agricultural Property**

22 Under Subsection 193.461(6)(a), F.S., the classified use valuation of agricultural land  
23 shall consider the following use factors only:

- 24  
25 \* The quantity and size of the property;
- 26  
27 \* The condition of the property;
- 28  
29 \* The present market value of the property as agricultural land;
- 30  
31 \* The income produced by the property;
- 32  
33 \* The productivity of the land in its current use;
- 34  
35 \* The economic merchantability of the agricultural product; and
- 36  
37 \* Such other agricultural factors as may from time to time become applicable and  
38 which are reflective of the standard present practices of agricultural use and  
39 production.

### 40 41 42 **Agricultural Property: The Income Approach**

43 Under Subsection 193.461(6), F.S., when using the income approach to value  
44 agricultural land, the appraiser shall consider the average of the income from the  
45 property for the past five years, rather than the income from the last year alone.

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1 \* Irrigation systems, including pumps and motors physically attached to the land, shall  
2 be considered part of the acreage under the income approach and not have a  
3 separately assessable value.

4  
5 \* Likewise, litter and waste containment structures on poultry and dairy farms shall be  
6 considered part of the acreage under the income approach and not have a  
7 separately assessable value.

8  
9 ~~**Note:** Legislation was enacted in 2018 to create section 193.4516, F.S., to provide that  
10 tangible personal property owned and operated by a citrus fruit packing or processing  
11 facility is deemed to have a market value no greater than its value for salvage, if such  
12 property is no longer used in the operation of the facility due to Hurricane Irma (2017) or  
13 due to citrus greening. This amendment applies to the 2018 tax roll. See Chapter 2018-  
14 118, Sections 10 and 11, Laws of Florida (CS/HB 7087).~~

### **Agricultural Property: Quarantine and Eradication Programs**

16 Under Subsection 193.461(7), F.S., agricultural land taken out of production due to a  
17 state or federal quarantine or eradication program shall continue to be classified as  
18 agricultural property.

19  
20  
21 \* If the land in the program lies fallow or is used for non-income producing purposes,  
22 the land shall have a de minimus value of no more than \$50 per acre.

23  
24 \* If the land in the program is used for another permissible agricultural use, the land  
25 shall be assessed based on that usage.

26  
27 \* If the land is converted to a non-agricultural use, it will be assessed as non-  
28 agricultural property under section 193.011, F.S.

29  
30 **Note:** Legislation was enacted in 2018 to amend section 193.461(6)(c), F.S. to provide  
31 that screened enclosed structures used in horticultural production for protection from  
32 pests and diseases or to comply with state or federal eradication or compliance  
33 agreements are a part of the average yields per acre and have no separately  
34 assessable value. See Chapter 2018-84, Section 1, Laws of Florida (CS/CS/SB 740).

35  
36 **Note:** Legislation was enacted in 2016 to amend section 193.461(7)(a), F.S., to provide  
37 that lands classified for assessment purposes as agricultural lands that a state or  
38 federal eradication or quarantine program takes out of production will remain agricultural  
39 lands for the remainder of the program. Lands that these programs convert to  
40 nonincome-producing uses will continue to be assessed at a minimum value of up to  
41 \$50 per acre on a single-year assessment methodology.

42  
43 This legislation identifies the Citrus Health Response Program as a state or federal  
44 eradication or quarantine program. The bill allows land to retain its agricultural  
45 classification for five years after the date of execution of a compliance agreement

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1 between the landowner and the Department of Agriculture and Consumer Services  
2 (DACCS) or a federal agency, as applicable, for this program or successor programs.  
3

4 Lands under these programs that are converted to fallow or otherwise nonincome-  
5 producing uses are still agricultural lands assessed at a minimal value of up to \$50 per  
6 acre on a single-year assessment methodology while fallow or used for nonincome-  
7 producing purposes. Lands under these programs that are replanted in citrus according  
8 to the requirements of the compliance agreement are classified as agricultural lands  
9 and are assessed at a minimal value of up to \$50 per acre, on a single-year  
10 assessment methodology, during the five-year term of agreement.  
11

12 See Chapter 2016-88, Sections 1 and 5, Laws of Florida (CS/CS/HB 749).  
13  
14

### **Agricultural Property: Special Types**

15 In addition to the classified use assessments of agricultural land discussed previously,  
16 there are additional provisions in Sections 193.451 and 193.4615, F.S., which address  
17 specific kinds of agricultural property.  
18

19  
20 These provisions usually deal with the assessment of tangible personal property and  
21 instruct that such property should either have no value placed upon it or that it should  
22 be valued at salvage value.  
23

24 Items with no value:

- 25 \* Growing annual crops
  - 26 \* Nonbearing fruit trees
  - 27 \* Raw agricultural products (until offered for sale)
- 28

29 Items valued as salvage:

- 30 \* Citrus grading and classification equipment leased from the Department of  
31 Agriculture
- 32 \* Obsolete agricultural equipment  
33  
34

### **Pollution Control Devices**

35 This property classification and its valuation are governed by Section 193.621, F.S.,  
36 which provides the following:  
37

- 38  
39 \* Pollution control devices installed in manufacturing or industrial plants or installations  
40 shall be valued as salvage;
- 41  
42 \* Demolition and reconstruction of part of such a facility for the purpose of reducing  
43 pollution, and which does not substantially increase the productivity of the facility,  
44 shall not increase the facility's assessed value;  
45

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- 1 \* The property appraiser is authorized to seek a recommendation from the  
2 Department of Environmental Protection as to what constitutes pollution control; and  
3  
4 \* The Department of Environmental Protection is authorized to promulgate rules  
5 concerning this classification.  
6

7 “Salvage value” is defined in rules of the Department of Environmental Protection as  
8 follows:  
9

10 *“the estimated fair market value, if any, which may be realized upon the sale or other*  
11 *disposition of a pollution control facility when it can no longer be used for the purpose*  
12 *for which it was designed.” See Rule 62-8.020, F.A.C.*  
13

14

### **Noncommercial Recreation and Conservation Lands**

15 This property classification and its valuation are governed by Section 193.501, F.S.  
16

17

18 To receive this classification, property must be subject to a conservation easement,  
19 qualified as environmentally endangered land, designated as conservation land, or used  
20 for outdoor recreational or park purposes.  
21

22

23 If the covenant or conveyance extends for more than ten years, the property shall be  
24 valued considering no factors other than those relative to its value for the present use  
25 as restricted by the covenant or conveyance.

26

27 If the covenant has less than ten years left, the property will be valued at just value  
28 considering the restrictions imposed by the covenant.  
29

30

31

### **Historic Property: Sections 193.503 and 193.505, F.S.**

32 Under Subsection 193.503(5), F.S., historic property is to be assessed using the  
33 following factors only:

34

- 35 \* Quantity and size of property;
- 36 \* Condition of property;
- 37 \* Present market value as historic property used for commercial or certain nonprofit  
38 purposes; and
- 39 \* Income produced by the property.

40

41 The historic property addressed under Subsection 193.505(3), F.S., must be valued  
42 recognizing the nature and length of the restriction placed on the use of the property  
43 under the provisions of the conveyance or covenant.  
44

45

### **High-Water Recharge Property**

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1 To allow this classification, the county must choose to adopt an ordinance providing for  
2 this classification and its valuation. See Subsections 193.625(1) and (5), F.S.

3  
4 The county's ordinance must provide the formula for assessing property that qualifies  
5 for this classification. See Subsection 193.625(5)(b), F.S.

6  
7 In counties that choose to adopt such ordinance, municipalities may also adopt an  
8 ordinance providing for classification and valuation of this property type. See Subsection  
9 193.625(5)(d), F.S.

### 10 11 12 **Working Waterfront Property (Classification Effective 2010)**

13 The Florida Constitution sets forth criteria for classifying and valuing working waterfront  
14 property.

15  
16 The provisions of Amendment 6, regarding working waterfronts, have been placed in  
17 the Florida Constitution at Article VII, Section (4)(j), effective for the 2010 assessment  
18 year. These provisions state as follows:

- 19  
20 *“(j)(1) The assessment of the following working waterfront properties shall*  
21 *be based upon the current use of the property:*
- 22 *a. Land used predominantly for commercial fishing purposes.*
  - 23 *b. Land that is accessible to the public and used for vessel launches*  
24 *into waters that are navigable.*
  - 25 *c. Marinas and drystacks that are open to the public.*
  - 26 *d. Water-dependent marine manufacturing facilities, commercial*  
27 *fishing facilities, and marine vessel construction and repair*  
28 *facilities and their support activities.*
- 29 *(2) The assessment benefit provided by this subsection is subject to*  
30 *conditions and limitations and reasonable definitions as specified by*  
31 *the legislature by general law.”*

32  
33 The constitutional amendment on working waterfront property is self-executing with  
34 authorization for the Legislature to elaborate by general law.

35  
36 In the 2009 and 2010 sessions, the Legislature considered bills that did not pass but  
37 that would have contained guidance for classifying and valuing working waterfront  
38 property. These bills would have applied to the 2010 tax year if they had become law.

39  
40 Amendment 6, creating classification of property used for working waterfronts, is  
41 effective for the 2010 year in the absence of legislation.

### 42 43 **Renewable Energy Source Devices**

44 \* Legislation enacted in 2013 created section 193.624, F.S., to provide for  
45 assessment of a "renewable energy source device" installed on or after January 1,  
46 2013, to new and existing residential real property.



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1  
2 \* When determining the assessed value of real property used for residential purposes,  
3 an increase in the just value of the property attributable to the installation of a  
4 renewable energy source device may not be considered.

5  
6 \* This requirement is an exception to certain provisions relating to assessment of  
7 changes, additions, or improvements in sections 193.155 and 193.1554, F.S.

8  
9 \* This legislation is effective July 1, 2013 and applies to assessments and  
10 administrative reviews beginning in 2014. See Chapter 2013-77, Sections 1, 2, and 3,  
11 Laws of Florida (HB 277).

12  
13 **Note:** Legislation enacted in 2017 amended section 193.624, F.S., to provide that, for  
14 nonresidential real property, 80 percent of the just value attributable to a renewable  
15 energy source device may not be considered in determining the assessed value of the  
16 property; this provision applies to devices installed on nonresidential property on or after  
17 January 1, 2018, except in a fiscally constrained county for which application for  
18 comprehensive plan amendment or planned unit development zoning is made by  
19 December 31, 2017. This change was effective July 1, 2017 and applies to  
20 assessments and administrative reviews beginning in 2018. See Chapter 2017-118,  
21 Sections 2 and 8, Laws of Florida (CS/SB 90).

### 22 23 24 **Competent Substantial Evidence for Establishing a Revised Classified** 25 **Use Value**

26 Competent substantial evidence for establishing a revised classified use value, as part  
27 of an administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence  
28 that:

- 29  
30 1. Cumulatively meets the statutory criteria that apply to the classified use valuation of  
31 the petitioned property;  
32  
33 2. Tends to prove (is probative of) classified use value as of January 1 of the  
34 assessment year under review;  
35  
36 3. Is sufficiently relevant and credible to be accepted as adequate to support (legally  
37 justify) the conclusion reached; and  
38  
39 4. Otherwise meets all requirements of law.  
40  
41

### 42 **The Administrative Review Process for Classified Use Valuations**

43 Below is a sequence of general procedural steps for Boards and special magistrates to  
44 follow in administrative reviews of classified use valuations to fulfill the procedural  
45 requirements of Section 194.301, F.S., and Rule 12D-9.027(3), F.A.C.  
46

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1 This sequence of steps applies to: the consideration of evidence, the development of  
2 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

3  
4 *“The board or special magistrate shall not be required to make, at any time during a  
5 hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See  
6 Rule 12D-9.025(9), F.A.C.

7  
8 *“The board or special magistrate has the discretion to determine whether to make such  
9 determinations during a hearing or to consider the petition and evidence further after the  
10 hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.

11  
12 In following this sequence of steps, Boards or special magistrates must also meet the  
13 requirements of Rule 12D-9.025(1), F.A.C., which are the following:

- 14 \* Review the evidence presented by the parties;
- 15 \* Determine whether the evidence presented is admissible;
- 16 \* Admit the evidence that is admissible; and
- 17 \* Identify the evidence presented to indicate that it is admitted or not admitted.

18  
19  
20  
21  
22  
23 The sequence of general procedural steps presented below is based on Rule 12D-  
24 9.027(3), F.A.C.

- 25  
26 1. Consider the admitted evidence presented by the parties.
- 27  
28 2. Identify and consider the statutory criteria that apply to the classified use valuation of  
29 the petitioned property.
- 30  
31 3. Identify and consider the essential characteristics of the petitioned property based on  
32 the admitted evidence and the statutory criteria that apply to the classified use  
33 valuation of the property.
- 34  
35 4. Identify the valuation methodology used by the property appraiser in developing the  
36 classified use valuation of the petitioned property, and consider this valuation  
37 methodology in light of the essential characteristics of the property.
- 38  
39 5. Determine whether the admitted evidence proves by a preponderance of the  
40 evidence that the property appraiser’s methodology complies with the statutory  
41 criteria that apply to the classified use valuation of the property.
- 42  
43 6. Determine whether the property appraiser’s classified use valuation methodology is  
44 appropriate and whether the property appraiser established a presumption of  
45 correctness for the assessment.
- 46

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- 1 a) The property appraiser's classified use valuation methodology is not appropriate  
2 and a presumption of correctness is not established unless the admitted  
3 evidence proves by a preponderance of the evidence that the property  
4 appraiser's classified use valuation methodology complies with the statutory  
5 criteria that apply to the classified use valuation of the property.  
6
- 7 b) The property appraiser's classified use valuation methodology is appropriate and  
8 the presumption of correctness is established only when the admitted evidence  
9 proves by a preponderance of the evidence that the property appraiser's  
10 classified use valuation methodology complies with the statutory criteria that  
11 apply to the classified use valuation of the property.  
12
- 13 7. If the Board or special magistrate determines that a presumption of correctness is  
14 established, the Board or special magistrate must then determine whether the  
15 admitted evidence proves by a preponderance of the evidence that:  
16
- 17 a) The property appraiser's classified use valuation does not represent classified  
18 use value; or  
19
- 20 b) The property appraiser's classified use valuation is arbitrarily based on valuation  
21 practices that are different from the valuation practices generally applied by the  
22 property appraiser to comparable property within the same county.  
23
- 24 8. If the Board or special magistrate determines that one or both of the conditions  
25 specified under Step 7 exist, the presumption of correctness is overcome.  
26
- 27 9. If the property appraiser does not establish a presumption of correctness, or if the  
28 presumption of correctness is overcome, the Board or special magistrate shall  
29 determine whether the hearing record contains competent, substantial evidence of  
30 classified use value that cumulatively meets the statutory criteria that apply to the  
31 classified use valuation of the property.  
32
- 33 a) If the hearing record contains competent, substantial evidence for establishing a  
34 revised classified use value, the Board or an appraiser special magistrate shall  
35 establish a revised classified use value based only upon such evidence. In  
36 establishing a revised classified use value, the Board or special magistrate is not  
37 restricted to any specific value offered by one of the parties.  
38
- 39 b) If the hearing record lacks competent, substantial evidence for establishing a  
40 revised classified use value, the Board or special magistrate shall remand the  
41 assessment to the property appraiser with appropriate directions for establishing  
42 classified use value. The property appraiser is required to follow these directions.  
43
- 44 10. If the property appraiser establishes a presumption of correctness as described in  
45 Step 6 above and that presumption of correctness is not overcome as described in  
46 Step 7 above, the assessment stands.

**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. ~~except:~~ More information on this topic is in Module 9.

~~1. If after transfer, the same person is entitled to the homestead exemption as was previously entitled and the transfer:~~

~~a. Is to correct an error; or~~

~~b. Is between legal and equitable title; or~~

~~c. Is by an instrument in which the owner is both grantor and grantee of the real property and one or more other individuals are additionally named as grantee. However, a change of ownership occurs if such individual applies for a homestead exemption on the property; or~~

Note: Legislation enacted in 2021 added subparagraph d:

~~d. Is by means of an instrument in which the owner entitled to the homestead exemption is listed as both grantor and grantee of the real property and one or more other individuals, all of whom held title as joint tenants with rights of~~

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~~survivorship with the owner, are named only as grantors and are removed from the title; or~~

~~See Chapter 2021-31, Section 2, Laws of Florida, (HB 7061), effective July 1, 2021.~~

~~**Note:** Legislation enacted in 2013 added what is now subparagraph e:~~

~~e. if the transfer is to a person who is entitled to the homestead exemption both before and after the transfer and the person is a lessee entitled to the homestead exemption under section 196.041(1), F.S.~~

~~See Chapter 2013-72, Section 4, Laws of Florida (SB 1830).~~

~~2. If the transfer is between husband and wife including a change or transfer to a surviving spouse or a transfer due to a dissolution of marriage; or~~

~~3. If the transfer occurs by operation of law under Section 732.401, F.S.; or~~

~~4. If on the death of the owner, the transfer is between the owner and another who is a permanent resident and is legally or naturally dependent upon the owner; or~~

~~**Note:** Legislation enacted in 2021 added subparagraph 5.:~~

~~5. The transfer occurs with respect to a property where all of the following apply:~~

~~a. Multiple owners hold title as joint tenants with rights of survivorship;~~

~~b. One or more owners were entitled to and received the homestead exemption on the property;~~

~~c. The death of one or more owners occurs; and~~

~~d. Subsequent to the transfer, the surviving owner or owners previously entitled to and receiving the homestead exemption continue to be entitled to and receive the homestead exemption.~~

~~See Chapter 2021-31, Section 2, Laws of Florida, (HB 7061), effective July 1, 2021.~~

~~**Note:** Legislation enacted in 2013 amended section 193.155, F.S., to provide that a property transfer is not a change of ownership if the transfer is to a person who is entitled to the homestead exemption both before and after the transfer and the person is a lessee entitled to the homestead exemption under section 196.041(1), F.S.~~

~~\* These changes are effective July 1, 2013, and apply to assessments and administrative reviews beginning in 2014. See Chapter 2013-72, Section 4, Laws of Florida (SB 1830).~~

~~**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~~

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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.

The types of property eligible for the 10 percent cap are provided under Section 193.1554, F.S., and Section 193.1555, F.S.

Section 193.1554, F.S., relates to the assessment of non-homesteaded residential property that contains nine or fewer dwelling units that does not receive a homestead exemption under Section 196.031, F.S., including vacant property zoned and platted for residential use.

Section 193.1555, F.S., relates to residential property with 10 or more units and to non-residential real property.

“Non-residential real property” means real property that is not subject to the assessment limitations set forth in subsection 4(a), (b), (c), (d), or (g), Article VII of the Florida Constitution. This involves property classified agricultural, high-water recharge, non-commercial recreational, conservation, and homestead limited increase property.

When ownership or control of the property changes, the property is subject to reassessment at just value.

A person or entity that owns non-homestead property subject to receiving the 10 percent assessment increase limitation under Sections 193.1554 or 193.1555, F.S., must notify the property appraiser of the county where the property is located of any change of ownership or control as defined in Sections 193.1554(5) and 193.1555(5), F.S. See section 193.1556, F.S.

Rule 12D-8.00659, F.A.C., (Notice of Change of Ownership or Control of Non-Homestead Property) contains detailed provisions explaining the change in ownership and control. Forms are included for the owner to notify the property appraiser as provided in sections 193.1554 and 193.1555, F.S.

NOTE: In Orange County Property Appraiser v. Sommers, 84 So.3d 1277 (Fla. 5th DCA 2012), the court held that when residential property changes from homestead to non-homestead, but ownership does not change, the ten percent cap for non-homestead property cannot be applied to the assessed value from the previous homestead cap. Rather, in the year following the change from homestead to non-homestead status, the

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1 new assessed value for the property (as non-homestead) must be equal to just value.  
2 Then, the new assessed value must be the base to which the ten percent cap for non-  
3 homestead property can be applied in future years. This is also addressed in 2012  
4 legislation. See Chapter 2012-193, Sections 6 and 7, Laws of Florida.

5  
6 Note: Legislation enacted in 2021 amended section 193.1554(6)(b), F.S., to provide  
7 that changes, additions, or improvements that replace all or a portion of nonhomestead  
8 residential property, including ancillary improvements, damaged or destroyed by  
9 misfortune or calamity shall be assessed upon substantial completion subject to the  
10 assessment increase limitation using the nonhomestead property's assessed value as  
11 of the January 1 prior to the date on which the damage or destruction was sustained,  
12 when (a. the square footage of the property as changed or improved does not exceed  
13 110 percent of the square footage of the property before the damage or destruction, or  
14 (b. the total square footage of the property as changed or improved does not exceed  
15 1,500 square feet. See Chapter 2021-31, Sections 4 and 7, Laws of Florida, (HB 7061),  
16 effective July 1, 2021 and applicable retroactively to assessments made on or after January 1,  
17 2021.

18  
19 Note: Legislation enacted in 2021 amended section 193.1555(6)(b), F.S., to provide  
20 that changes, additions, or improvements that replace all or a portion of real property,  
21 including ancillary improvements, damaged or destroyed by misfortune or calamity shall  
22 be assessed upon substantial completion subject to the assessment increase limitation  
23 using the nonresidential real property's assessed value as of the January 1 prior to the  
24 date on which the damage or destruction was sustained, when (a. the square footage of  
25 the property as changed or improved does not exceed 110 percent of the square  
26 footage of the property before the damage or destruction, or (b. the total square footage  
27 of the property as changed or improved does not exceed 1,500 square feet. See Chapter  
28 2021-31, Sections 6 and 7, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable  
29 retroactively to assessments made on or after January 1, 2021.

### 30 31 **Differences in Administration Between Sections 193.1554 and** 32 **193.1555, F.S.**

33 The administration of Sections 193.1554 and 193.1555, F.S., is similar but has four  
34 main differences. These differences are:

- 35
- 36 1. For residential with nine or fewer dwelling units Section 193.1554, F.S., there is no  
37 change in ownership if the transfer is between husband and wife, including a transfer  
38 to a surviving spouse or a transfer due to a dissolution of marriage.  
39  
40 \* This provision is not in Section 193.1555, F.S.  
41
  - 42 2. For residential with 10 units or more and nonresidential, Section 193.1555, F.S.,  
43 property must be reassessed at just value if there is a "qualifying" improvement,  
44 meaning any substantially completed improvement that increases the just value of  
45 the property by at least 25 percent.  
46

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1 \* "Improvement" is an addition or change to land or buildings that increases their  
2 value and is more than a repair or a replacement.

3  
4 \* This provision is not in Section 193.1554, F.S.

5  
6 3. Under Section 193.1554, F.S., changes, additions, or improvements include  
7 improvements to common areas or other property that directly benefit the property.

8  
9 \* Such changes are assessed at just value and apportioned among the benefitting  
10 parcels.

11  
12 \* This provision is not in Section 193.1555, F.S.

13  
14 ~~4. Under Section 193.1554, F.S., provisions relating to the replacement of property~~  
15 ~~damaged or destroyed by misfortune or calamity state that the assessed value is not~~  
16 ~~to increase if the total square footage of the property as changed or improved does~~  
17 ~~not exceed 1,500 square feet.~~

18  
19 \* ~~This provision is not in Section 193.1555, F.S.~~

20  
21 \* ~~The latter section, however, states that the improvements cannot have changed~~  
22 ~~the property's character or use, a provision not in Section 193.1554, F.S.~~

### 23 24 25 **Authority for Administrative Reviews of Assessed Valuations**

26 It is clear under Section 194.301, F.S., amended by HB 521, that the Board or special  
27 magistrate may consider petitions on the current year assessed value. Section  
28 194.301(1), F.S. states:

29  
30 *"... if the appraiser proves by a preponderance of the evidence that the*  
31 *assessment was arrived at by complying with s. 193.011, any other applicable*  
32 *statutory requirements relating to classified use values or assessment caps, ..."*

33  
34 Section 194.301(2)(a), F.S., states the Board or special magistrate may determine:

35  
36 *"... that the assessed value:*

37 *1. Does not represent the just value of the property after taking into account any*  
38 *applicable limits on annual increases in the value of the property;..."*

39  
40 These provisions refer to the calculation of limited increase property and refer to the  
41 statutory criteria applicable to assessment of such properties. Also, see Rule 12D-  
42 9.027(3)(a), (b), and (d), F.A.C.

43  
44 Thus, it is clear that a petitioner may appeal an assessed valuation for the current year  
45 under the statutory criteria pertaining to calculation of assessed value.

46



1  
2 **Competent Substantial Evidence for Establishing a Revised Assessed**  
3 **Value**

4 Competent substantial evidence for establishing a revised assessed value, as part of an  
5 administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:

- 6  
7 1. Cumulatively meets the statutory criteria that apply to the assessed valuation of the  
8 petitioned property;  
9  
10 2. Tends to prove (is probative of) assessed value as of January 1 of the assessment  
11 year under review;  
12  
13 3. Is sufficiently relevant and credible to be accepted as adequate to support (legally  
14 justify) the conclusion reached; and  
15  
16 4. Otherwise meets all requirements of law.  
17  
18

19 **The Administrative Review Process for Assessed Valuations**

20 Below is a sequence of general procedural steps for Boards and special magistrates to  
21 follow in administrative reviews of assessed valuations of limited increase property to  
22 fulfill the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(3),  
23 F.A.C.  
24

25 This sequence of steps applies to: the consideration of evidence, the development of  
26 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.  
27

28 *“The board or special magistrate shall not be required to make, at any time during a*  
29 *hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See  
30 Rule 12D-9.025(9), F.A.C.  
31

32 *“The board or special magistrate has the discretion to determine whether to make such*  
33 *determinations during a hearing or to consider the petition and evidence further after the*  
34 *hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.  
35

36 In following this sequence of steps, Boards or special magistrates must also meet the  
37 requirements of Rule 12D-9.025(1), F.A.C., listed following:  
38

- 39 a) Review the evidence presented by the parties;  
40  
41 b) Determine whether the evidence presented is admissible;  
42  
43 c) Admit the evidence that is admissible; and  
44  
45 d) Identify the evidence presented to indicate that it is admitted or not admitted.  
46

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- 1 The sequence of general procedural steps presented below is based on Rule 12D-  
2 9.027(3), F.A.C.  
3
- 4 1. Consider the admitted evidence presented by the parties.  
5
  - 6 2. Identify and consider the statutory criteria that apply to the assessed valuation of the  
7 petitioned property.  
8
  - 9 3. Identify and consider the essential characteristics of the petitioned property based on  
10 the admitted evidence and the statutory criteria that apply to the assessed valuation  
11 of the property.  
12
  - 13 4. Identify the valuation methodology used by the property appraiser in developing the  
14 assessed valuation of the petitioned property, and consider this valuation  
15 methodology in light of the essential characteristics of the property.  
16
  - 17 5. Determine whether the admitted evidence proves by a preponderance of the  
18 evidence that the property appraiser's methodology complies with the statutory  
19 criteria that apply to the assessed valuation of the property.  
20
  - 21 6. Determine whether the property appraiser's assessed valuation methodology is  
22 appropriate and whether the property appraiser established a presumption of  
23 correctness for the assessment.  
24
    - 25 a) The property appraiser's assessed valuation methodology is not appropriate and  
26 a presumption of correctness is not established unless the admitted evidence  
27 proves by a preponderance of the evidence that the property appraiser's  
28 assessed valuation methodology complies the statutory criteria that apply to the  
29 assessed valuation of the property.  
30
    - 31 b) The property appraiser's assessed valuation methodology is appropriate and the  
32 presumption of correctness is established only when the admitted evidence  
33 proves by a preponderance of the evidence that the property appraiser's  
34 assessed valuation methodology complies with the statutory criteria that apply to  
35 the assessed valuation of the property.  
36
  - 37 7. If the Board or special magistrate determines that a presumption of correctness is  
38 established, the Board or special magistrate must then determine whether the  
39 admitted evidence proves by a preponderance of the evidence that:  
40
    - 41 a) The property appraiser's assessed valuation does not represent assessed value;  
42 or  
43
    - 44 b) The property appraiser's assessed valuation is arbitrarily based on valuation  
45 practices that are different from the valuation practices generally applied by the  
46 property appraiser to comparable property within the same county.

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- 1
- 2 8. If the Board or special magistrate determines that one or both of the conditions
- 3 specified under Step 7 exist, the presumption of correctness is overcome.
- 4
- 5 9. If the property appraiser does not establish a presumption of correctness, or if the
- 6 presumption of correctness is overcome, the Board or special magistrate shall
- 7 determine whether the hearing record contains competent, substantial evidence of
- 8 assessed value that cumulatively meets the statutory criteria that apply to the
- 9 assessed valuation of the property.
- 10
- 11 a) If the hearing record contains competent, substantial evidence for establishing a
- 12 revised assessed value, the Board or an appraiser special magistrate shall
- 13 establish a revised assessed value based only upon such evidence. In
- 14 establishing a revised assessed value, the Board or special magistrate is not
- 15 restricted to any specific value offered by one of the parties.
- 16
- 17 b) If the hearing record lacks competent, substantial evidence for establishing a
- 18 revised assessed value, the Board or special magistrate shall remand the
- 19 assessment to the property appraiser with appropriate directions for establishing
- 20 assessed value. The property appraiser is required to follow these directions.
- 21
- 22 10. If the property appraiser establishes a presumption of correctness as described in
- 23 Step 6 above and that presumption of correctness is not overcome as described in
- 24 Step 7 above, the assessment stands.

### **~~(NEW) Assessment of Certain Property Damaged or Destroyed by Hurricane Michael in 2018~~**

~~Legislation enacted on 2020 created section 193.1557, F.S., relating to assessment of certain property damaged or destroyed by Hurricane Michael in 2018, and providing that sections 193.155(4)(b), 193.1554(6)(b), or 193.1555(6)(b), F.S., relating to assessment of changes, additions or improvements, apply to such changes, additions, or improvements begun within five years after January 1, 2019. The new section 193.1557, F.S., applies to 2019 through 2023 tax years and stands repealed on December 31, 2023. See Chapter 2020-10 Section 3, Laws of Florida, effective July 1, 2020.~~

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## Module 8: Administrative Reviews of Tangible Personal Property Just Valuations

7 **Training Module 8 addresses the following topics:**

- 8 • Statutory Law Beginning in 2009 (See HB 521)
- 9 • ~~Overview of Appraisal Development~~
- 10 • Standard of Proof for Administrative Reviews
- 11 • Scope of Authority for Administrative Reviews
- 12 • Legal Limitations on Administrative Reviews
- 13 • ~~The Florida Legal Provisions on the~~ Tangible Personal Property Appraisal Guidelines
- 14 • Florida Information on Appraisal Development
- 15 • Definition of Tangible Personal Property (TPP)
- 16 • Exemptions for Tangible Personal Property
- 17 • Requirement for Taxpayers to File TPP Returns
- 18 • The Eight Factors of Just Valuation in Section 193.011, F.S.
- 19 • ~~Proper Consideration of the Just Valuation Factors~~
- 20 • ~~The Seven Overarching Standards for Valid Just Valuations~~
- 21 • ~~Consideration of Previous Year's Board-Adjusted Assessment~~
- 22 • Petitioner Not Required to Present Opinion or Estimate of Value
- 23 • Presentation of Evidence by the Parties
- 24 • Evaluation of Evidence by the Board or Special Magistrate
- 25 • Sufficiency of Evidence
- 26 • Requirements for Establishing a Presumption of Correctness
- 27 • Requirements for Overcoming a Presumption of Correctness
- 28 • Establishing a Revised Just Value or Remanding the Assessment
- 29 • Competent Substantial Evidence for Establishing a Revised Just Value
- 30 • Establishment of Revised Just Values in Administrative Reviews
- 31 • Sequence of General Procedural Steps
- 32 • Operation of the Eighth Criterion Under Florida Law
- 33 • The Eighth Criterion in Reviews of Tangible Personal Property
- 34 • ~~(NEW) Appraisal by Special Magistrate May Not Be Submitted as Evidence~~

38 **Learning Objectives**

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

- 40
- 41 • Identify the 2009 changes enacted in ~~the 2009~~ statutory law (HB 521)
  - 42 • Distinguish between who does appraisal development and who does NOT
  - 43 • Identify legal provisions on the Tangible Personal Property Appraisal Guidelines
  - 44 • Identify legal provisions that represent limitations on the discretion of property
  - 45 appraisers

## 2021~~0~~ Value Adjustment Board Training - Module 8

- 1 • Recognize that the factor in Section 193.011(8), F.S., must be properly considered in
- 2 the just valuation of tangible personal property (TPP)
- 3 • Recognize the four components of the definition of personal property
- 4 • Identify how the Florida Supreme Court has addressed intangible personal property
- 5 in the just valuation of tangible personal property
- 6 • Recognize the requirement that personal property types other than TPP must be
- 7 excluded from just valuations of TPP
- 8 • Distinguish between appraisal development and administrative reviews
- 9 • Recognize and apply the scope of authority for administrative reviews
- 10 • Identify the items that a Board or special magistrate may consider in addition to
- 11 admitted evidence
- 12 • Recognize and apply the definition of tangible personal property (TPP)
- 13 • Identify the requirements for filing a TPP return (Form DR-405)
- 14 • Recognize the types of information required on a filed return (Form DR-405)
- 15 • Identify how the property appraiser may use a filed TPP return
- 16 • Recognize the link between the requirement to file a TPP return with the property
- 17 appraiser and the right to file a petition with the Board
- 18 • Identify the eight factors of just valuation in Section 193.011, F.S.
- 19 • Recognize the legal standards for consideration of the just valuation factors
- 20 • Identify the provisions of Section 193.016, F.S., regarding the property appraiser's
- 21 consideration of the previous year's Board-adjusted assessment
- 22 • Recognize how the Florida Supreme Court has addressed Section 193.016, F.S.
- 23 • Identify the applicable standard of proof, its definition, and how it is applied
- 24 • Identify standards of proof that do NOT apply in administrative reviews
- 25 • Recognize that a petitioner is NOT required to present an opinion of value
- 26 • Understand the order of presentation of evidence
- 27 • Identify and apply the steps for evaluating evidence in administrative reviews
- 28 • Recognize and apply the provisions for ruling on the admissibility of evidence
- 29 • Identify and apply the definitions of relevant evidence and credible evidence
- 30 • Recognize and apply the standards for determining the sufficiency of evidence
- 31 • Identify types of information that are NOT sufficient evidence for establishing a
- 32 presumption of correctness
- 33 • Recognize the requirements for establishing a presumption of correctness
- 34 • Recognize the requirements for overcoming a presumption of correctness
- 35 • Identify the alternative actions required when a presumption of correctness was not
- 36 established, or was established but later was overcome
- 37 • Identify and apply the elements of the definition of competent substantial evidence
- 38 for establishing a revised assessment
- 39 • Recognize the conditions under which a Board or special magistrate is required to
- 40 establish a revised just value
- 41 • Identify legal limitations on administrative reviews
- 42 • Apply the sequence of general procedural steps for administrative reviews of just
- 43 valuations
- 44 • Identify when the Board or special magistrate is required or is NOT required to make
- 45 determinations such as findings, conclusions, or decisions

## 2021~~0~~ Value Adjustment Board Training - Module 8

- 1 • Recognize that the factor in Section 193.011(8), F.S., must be properly considered in  
2 administrative reviews of just valuations of tangible personal property, regardless of  
3 whether an actual sale of the property has occurred  
4  
5

### 6 **Statutory Law Beginning in 2009 (See HB 521)**

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

10  
11 The complete text of this current legislation is presented following:  
12

13 *Be It Enacted by the Legislature of the State of Florida:*

#### 14 Section 1.

15 *Section 194.301, Florida Statutes, is amended to read:*

16 *194.301 Challenge to ad valorem tax assessment.—*  
17  
18

19 *(1) In any administrative or judicial action in which a taxpayer challenges an ad valorem*  
20 *tax assessment of value, the property appraiser's assessment is presumed correct if the*  
21 *appraiser proves by a preponderance of the evidence that the assessment was arrived*  
22 *at by complying with s. 193.011, any other applicable statutory requirements relating to*  
23 *classified use values or assessment caps, and professionally accepted appraisal*  
24 *practices, including mass appraisal standards, if appropriate. However, a taxpayer who*  
25 *challenges an assessment is entitled to a determination by the value adjustment board*  
26 *or court of the appropriateness of the appraisal methodology used in making the*  
27 *assessment. The value of property must be determined by an appraisal methodology that*  
28 *complies with the criteria of s. 193.011 and professionally accepted appraisal practices.*  
29 *The provisions of this subsection preempt any prior case law that is inconsistent with this*  
30 *subsection.*

31  
32 *(2) In an administrative or judicial action in which an ad valorem tax assessment is*  
33 *challenged, the burden of proof is on the party initiating the challenge.*  
34

35 *(a) If the challenge is to the assessed value of the property, the party initiating the*  
36 *challenge has the burden of proving by a preponderance of the evidence that the*  
37 *assessed value:*

38  
39 *1. Does not represent the just value of the property after taking into account any*  
40 *applicable limits on annual increases in the value of the property;*  
41

42 *2. Does not represent the classified use value or fractional value of the property if the*  
43 *property is required to be assessed based on its character or use; or*  
44

45 *3. Is arbitrarily based on appraisal practices that are different from the appraisal practices*  
46 *generally applied by the property appraiser to comparable property within the same*  
47 *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 is now in effect and applies to the administrative review of assessments  
37 beginning with 2009 assessments.

38  
39 \* Procedural steps for implementing this 2009 legislation for administrative reviews of  
40 just valuations are presented later in this training module.

41  
42 Board attorneys and special magistrates are responsible for ensuring that this important  
43 legislation is implemented for all administrative reviews of assessments starting in  
44 2009.

45  
46 This 2009 legislation lowered the standard of proof for assessment challenges, greatly  
47 increased the level of diligence for developing and reporting just valuations, and added

## 20210 Value Adjustment Board Training - Module 8

1 the following four new determinative standards for developing, reporting, and reviewing  
2 just valuations:1) compliance with professionally accepted appraisal practices; 2)  
3 avoidance of arbitrarily different appraisal practices within groups of comparable  
4 property within the same county; 3) avoidance of superseded case law; and 4) correct  
5 application of an appropriate appraisal methodology. These changes are explained in a  
6 following section titled “The Seven Overarching Standards for Valid Just Valuations.”  
7

8 ~~This law significantly changed the standard of review for assessments, and Boards and~~  
9 ~~special magistrates must become familiar with this law to ensure its implementation.~~

10  
11 ~~Where appropriate, key points from this current law are presented in this and other~~  
12 ~~modules of this training. However, users of this training are advised to obtain a copy of~~  
13 ~~the current law and review it carefully to understand all of its provisions.~~

14  
15 The 2009 law now change provides a lower standard of proof, called “preponderance of  
16 the evidence,” for determining whether the assessment is incorrect.

17  
18 \* “Preponderance of the evidence” is a standard (level) of proof that means “greater  
19 weight of the evidence” or “more likely than not.”

20  
21 In determining whether the assessment is incorrect, Boards and special magistrates  
22 must not use any standard of proof other than the preponderance of the evidence  
23 standard, as provided in Section 194.301, F.S., as amended by Chapter 2009-121,  
24 Laws of Florida (House Bill 521).

25  
26 Higher standards of proof no longer apply. The higher standard of proof called “clear  
27 and convincing evidence” no longer applies in the administrative review of assessments  
28 and must not be used by Boards or special magistrates. See Section 194.301, F.S., as  
29 amended by Chapter 2009-121, Laws of Florida (House Bill 521).

30  
31 *“It is the express intent of the Legislature that a taxpayer shall never have the burden of*  
32 *proving that the property appraiser’s assessment is not supported by any reasonable*  
33 *hypothesis of a legal assessment.”* See Subsection 194.3015(1), F.S., as created by Chapter 2009-  
34 121, Laws of Florida (House Bill 521).

35  
36 ~~The current statute provides the following: “The provisions of this subsection preempt~~  
37 ~~any prior case law that is inconsistent with this subsection.” See Subsection 194.301(1), F.S.,~~  
38 ~~as amended by Chapter 2009-121, Laws of Florida (House Bill 521).~~

39  
40 ~~References to Florida court decisions are presented in this training. Generally, these~~  
41 ~~court decisions predate the 2009 changes to statutory law. The current statutory law~~  
42 ~~supersedes these decisions to the extent these decisions conflict with it.~~

43  
44 ~~Thus, the information from these court decisions, as presented in this training, has been~~  
45 ~~modified where appropriate for consistency with the 2009 changes in the statute.~~  
46



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1 ~~For example, court decisions recognize that property appraisers have discretion, which~~  
2 ~~is limited by other provisions of law, in weighing just valuation factors and in selecting~~  
3 ~~an appraisal methodology.~~

4  
5 ~~\* The current statute contains an additional requirement that the appraisal~~  
6 ~~methodology used in making the assessment must comply with “professionally~~  
7 ~~accepted appraisal practices.”~~

8  
9 ~~\* This current requirement represents an additional statutory limitation on the property~~  
10 ~~appraiser’s discretion.~~

11  
12 ~~Therefore, where appropriate in this training, the current requirement on “professionally~~  
13 ~~accepted appraisal practices” has been added to modify the information from prior court~~  
14 ~~decisions for consistency with the current statutory law.~~

15  
16 ~~\* This training module includes references to this current statutory law where~~  
17 ~~appropriate.~~

18  
19 ~~This training is intended to contain information that is consistent with the current~~  
20 ~~statutory provisions in Sections 194.301 and 194.3015, F.S., as amended by Chapter~~  
21 ~~2009-121, Laws of Florida (House Bill 521).~~

22  
23 ~~An overall summary of the provisions of this current law is presented in Module 1 of this~~  
24 ~~training. Provisions of this current statute are addressed where appropriate in other~~  
25 ~~slides in this module and in other modules of this training.~~

### **Overview of Appraisal Development**

26  
27  
28  
29 ~~Appraisal development, or valuation development, is the process of producing an~~  
30 ~~original appraisal (determination of value) using the overall appraisal process.~~

31  
32 ~~In administrative reviews, Boards and special magistrates are not authorized to perform~~  
33 ~~appraisal development and must not perform appraisal development.~~

34  
35 ~~Property appraisers do appraisal development as part of their annual production of~~  
36 ~~assessment rolls. Private sector appraisers also do appraisal development.~~

37  
38 ~~Generally, property appraisers use a professionally accepted methodology called mass~~  
39 ~~appraisal to develop tangible personal property (TPP) just values each year.~~

40  
41 ~~The Tangible Personal Property (TPP) Appraisal Guidelines generally describe the~~  
42 ~~mass appraisal development process for TPP under Florida law.~~

43  
44 ~~It is implicit in mass appraisal that, even when properly specified and calibrated mass~~  
45 ~~appraisal models are used, some individual value conclusions will not meet standards of~~  
46 ~~reasonableness, consistency, and accuracy.~~

47

## 20210 Value Adjustment Board Training - Module 8

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### **Standard of Proof for Administrative Reviews**

In administrative reviews, Boards or special magistrates must consider admitted evidence and then compare the weight of the evidence to a “standard of proof” to make a determination on an issue under review.

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

“Standard of proof” means the level of proof needed by the Board or special magistrate to reach a particular conclusion. See Rule 12D-9.027(5), F.A.C.

The standard of proof that applies in administrative reviews is called “preponderance of the evidence,” which means “greater weight of the evidence.” See Rule 12D-9.027(5), F.A.C.

Also, the Florida Supreme Court has defined “preponderance of the evidence” as “greater weight of the evidence” or evidence that “more likely than not” tends to prove a certain proposition. See *Gross v. Lyons*, 763 So.2d 276 (Fla. 2000).

“Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case. See Florida Standard Civil Jury Instructions, approved for publication by the Florida Supreme Court.

The Board or special magistrate must determine whether the admitted evidence is sufficiently relevant and credible to reach the “preponderance of the evidence” standard of proof.

This standard of proof is the scale by which the Board or special magistrate measures the weight (relevance and credibility) of the admitted evidence in making a determination.

~~A higher standard of proof called “clear and convincing evidence” no longer applies in the administrative review of assessments and must not be used by Boards or special magistrates. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).~~

~~In no case shall the taxpayer be required to prove that the property appraiser’s assessment is not supported by any reasonable hypothesis of a legal assessment. See Subsection 194.3015(1), F.S., as created by Chapter 2009-121, Laws of Florida (House Bill 521).~~

1 **Scope of Authority for Administrative Reviews**

2 The administrative review of just valuations is performed by Boards or special  
3 magistrates under Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10, and  
4 12D-16, F.A.C.; and other provisions of Florida law.

5  
6 The administrative review process performed by Boards and special magistrates is  
7 separate and different from the mass appraisal development process performed by  
8 property appraisers.

9  
10 In administrative reviews, Boards and special magistrates are not authorized to perform  
11 appraisal development and must not perform appraisal development.

12  
13 In administrative reviews, Boards and special magistrates are not authorized to perform  
14 any independent factual research into attributes of the subject property or any other  
15 property.

16  
17 Boards and special magistrates must follow the provisions of law on the administrative  
18 review of assessments. See Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10,  
19 and 12D-16, F.A.C.; and other provisions of Florida law.

20  
21 In establishing revised just values when required by law, Boards and special  
22 magistrates are bound by the same standards and practices as property appraisers. See  
23 Rule 12D-10.003(1), F.A.C., treated favorably in Bystrom v. Equitable Life Assurance Society,  
24 416 So.2d 1133 (Fla. 3d DCA 1982), and see Section 194.301, F.S., as amended by Chapter  
25 2009-121, Laws of Florida (House Bill 521).

26  
27 \* However, when observing this requirement, Boards and special magistrates must  
28 act within their scope of authority.

29  
30 The effective date of administrative review is January 1 each year, and the property  
31 interest to be reviewed is the unencumbered fee simple estate.

32  
33 The Board or special magistrate has no authority to develop original just valuations of  
34 property and may not take the place of the property appraiser, but shall revise the  
35 assessment when required under Florida law. See Rule 12D-10.003(1), F.A.C., and Section  
36 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

37  
38 \* See Simpson v. Merrill, 234 So.2d 350 (Fla. 1970), stating that a court may not take the place  
39 of the property appraiser but may reduce the assessment.

40  
41 \* Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding  
42 that the determination of the weight to be accorded evidence rests upon the trial judge, as  
43 trier of facts, and if competent substantial evidence is introduced demonstrating the  
44 assessment to be erroneous, the judge may reduce that assessment.

45

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1 The Board or special magistrate is required to revise the assessment under the  
2 conditions specified in Section 194.301, F.S., as amended by Chapter 2009-121, Laws  
3 of Florida (House Bill 521). These conditions are described in detail later in this module.

4  
5 *“In establishing a revised just value, the board or special magistrate is not restricted to*  
6 *any specific value offered by one of the parties.”* See Rule 12D-9.027(2)(b)3.a., F.A.C.

7  
8 \* Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding  
9 that the reviewing judge could arrive at a value that was different from either of the values  
10 presented by the parties when the judge’s value was based on competent substantial evidence  
11 in the record.

12  
13 The Board or special magistrate is authorized to make calculations, and to make an  
14 adjustment to the property appraiser’s value based on competent substantial evidence  
15 of just value in the record. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws  
16 of Florida (House Bill 521), and see Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977),  
17 stating that when the record contains competent substantial evidence of value the court may  
18 make necessary value calculations or adjustments based on such evidence.

19  
20 If the hearing record does not contain competent substantial evidence of just value, the  
21 Board or special magistrate cannot substitute its own independent judgment. See Section  
22 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see  
23 Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977), stating that in the absence of  
24 competent substantial evidence of value the court cannot substitute its own independent  
25 judgment.

26  
27 The Board or special magistrate has no authority to adjust assessments across-the-  
28 board. Their authority to review just valuations is limited to the review of individual  
29 petitions filed. See Spooner v. Askew, 345 So.2d 1055 (Fla. 1976).

30  
31 The Board has the limited function of reviewing and correcting individual assessments  
32 developed by the property appraiser. See Bath Club, Inc. v. Dade County, 394 So.2d 110  
33 (Fla. 1981).

34  
35 The Board has no authority to review, on its own volition, a decision of the property  
36 appraiser to deny an exemption. See Redford v. Department of Revenue, 478 So.2d 808  
37 (Fla. 1985).

38  
39 *“The powers, authority, duties and functions of the board, insofar as they are*  
40 *appropriate, apply equally to real property and tangible personal property (including*  
41 *taxable household goods).”* See Rule 12D-10.003(2), F.A.C.

42  
43 In administrative reviews, Boards and special magistrates are not authorized to consider  
44 any evidence except evidence properly presented by the parties and properly admitted  
45 into the record for consideration. See Rule 12D-9.025(4)(a), F.A.C.

46

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1 In addition to admitted evidence, Boards and special magistrates are authorized to  
2 consider only the following items in administrative reviews.

- 3
- 4 1. Legal advice from the Board legal counsel;
- 5
- 6 2. Information contained or referenced in the Department's Uniform Policies and  
7 Procedures Manual and Accompanying Documents;
- 8
- 9 3. Information contained or referenced in the Department's training for value  
10 adjustment boards and special magistrates; and
- 11
- 12 4. Professional texts that pertain only to professionally accepted appraisal practices  
13 that are not inconsistent with Florida law.
- 14
- 15

### 16 **Legal Limitations on Administrative Reviews**

17 No evidence shall be considered by the Board or special magistrate except when  
18 presented during the time scheduled for the petitioner's hearing, or at a time when the  
19 petitioner has been given reasonable notice. See Subsection 194.034(1)(c), F.S. Also, see  
20 Rule 12D-9.025(4)(a), F.A.C.

21

22 Other provisions of law address the responsibilities of petitioners and property  
23 appraisers that may affect the review and consideration of evidence at a hearing.

24

25 \* The Board or special magistrate must consult with the Board legal counsel on any  
26 questions about the review and consideration of evidence.

27

28 In administrative reviews, the Board or special magistrate shall not consider the tax  
29 consequences of the valuation of a specific property. See Rule 12D-10.003(1), F.A.C.

30

31 The Board or special magistrate has no power to grant relief by adjusting the value of a  
32 property on the basis of hardship of a particular taxpayer. See Rule 12D-10.003(1), F.A.C.

33

34 Unless the provisions of Section 193.016, F.S., apply, a just valuation challenge must  
35 stand or fall on its own validity, unconnected with the just value of any prior or  
36 subsequent year. See Keith Investments, Inc. v. James, 220 So.2d 695 (Fla. 4th DCA 1969);  
37 Also, see Dade County v. Tropical Park, Inc., 251 So.2d 551 (Fla. 3rd DCA 1971).

38

39 Unless the provisions of Section 193.016, F.S., apply, the prior year's just value is not  
40 competent evidence of just value in the current year, even when there is no evidence  
41 showing a change in circumstances between the two dates of assessment. See Simpson  
42 v. Merrill, 234 So.2d 350 (Fla. 1970).

43

44 An appraisal report shall not be submitted as evidence in a value adjustment board  
45 proceeding in any tax year in which the person who performed the appraisal serves as a  
46 special magistrate to that county value adjustment board for the same tax year.  
47 Accordingly, in that tax year the board and any special magistrate in that county shall

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1 not admit such appraisal report into evidence and shall not consider any such appraisal  
2 report. See Rule 12D-9.025(4)(g), F.A.C.  
3  
4

### 5 **The Florida Legal Provisions on the Tangible Personal Property** 6 **Appraisal Guidelines**

7 Below are provisions from Section 195.032, Florida Statutes, describing the Tangible  
8 Personal Property Appraisal Guidelines.  
9

- 10 1. *"The standard measures of value shall provide guidelines for the valuation of*  
11 *property and methods for property appraisers to employ in arriving at the just*  
12 *valuation of particular types of property consistent with section 193.011..."*  
13  
14 2. *"The standard measures of value shall assist the property appraiser in the valuation*  
15 *of property and be deemed prima facie correct, but shall not be deemed to establish*  
16 *the just value of any property."*  
17

18 See Rule 12D-51.002, Florida Administrative Code, for more information on the  
19 Tangible Personal Property (TPP) Appraisal Guidelines.  
20

#### 21 **NOTICE:**

#### 22 **The Florida Tangible Personal Property Appraisal Guidelines are Out-of-Date**

23  
24 The Florida Tangible Personal Property (TPP) Appraisal Guidelines, developed under  
25 sections 195.002, 195.032, and 195.062, F.S., were last revised in 1997 and are now  
26 out-of-date due to changes in law. The 1997 guidelines do NOT reflect the impacts of  
27 the landmark 2009 enactments in sections 194.301 and 194.3015. Pertinent to the  
28 guidelines, the 2009 legislation greatly increased the level of diligence required for  
29 developing and reporting just valuations and also established four additional,  
30 determinative standards for developing, reporting, and reviewing just valuations. These  
31 four additional standards are: 1) compliance with professionally accepted appraisal  
32 practices; 2) avoidance of arbitrarily different appraisal practices within groups of  
33 comparable property within the same county; 3) avoidance of superseded case law; and  
34 4) correct application of an appropriate appraisal methodology. The 1997 TPP appraisal  
35 guidelines cannot be used as any sort of standard for the property appraiser's  
36 development and reporting of just valuations or for the VAB's review of just valuations.  
37 Rather, the current determinative legal standards to be used for just valuation  
38 development, reporting, and review are listed under the seven overarching standards  
39 for valid just valuations presented below herein. Such standards reflect the 2009  
40 enactments involving sections 194.301, 193.011, and 194.3015, F.S.  
41

42 More information on these 2009 enactments is presented in a following section titled  
43 "The Seven Overarching Standards for Valid Just Valuations."  
44

45 A copy of the 1997 TPP guidelines is available at:  
46 <http://floridarevenue.com/dor/property/tpp/>  
47

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### 1 2 **Florida Information on Appraisal Development**

3 ~~The Tangible Personal Property Appraisal Guidelines contain descriptions of appraisal~~  
4 ~~methods that may be used by property appraisers to develop just valuations of tangible~~  
5 ~~personal property consistent with Florida law.~~

6  
7 ~~Boards and special magistrates are expected to understand these guidelines for~~  
8 ~~purposes of reviewing challenged assessments.~~

9  
10 ~~A copy of these guidelines is available at the following web address:~~  
11 ~~—————<http://floridarevenue.com/dor/property/tpp/>~~

12  
13 ~~In the context of Florida ad valorem tax law, appraisal development is the act, by an~~  
14 ~~appraiser, of applying the appraisal process to arrive at valid just valuations.~~

15  
16 ~~More information on Florida’s standards for appraisal development is in a following~~  
17 ~~section titled “The Seven Overarching Standards for Valid Just Valuations.”~~

18  
19 Section 4, Article VII, of the Florida Constitution, requires a just valuation of all property  
20 for ad valorem taxation, with certain conditions.

21  
22 Florida’s constitution has “*delegated to the Legislature the responsibility for deciding the*  
23 *specifics of how that ‘just valuation’ would be secured.*” Sunset Harbour Condominium  
24 Ass’n v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Collier County v. State, 733 So.2d  
25 1012, 1019 (Fla. 1999).

26  
27 ~~The In-section 193.011, F.S., the~~ Florida Legislature has effectuated the constitutional  
28 requirement for just valuations by specifying just valuation standards in several statutes,  
29 as explained below in a section titled “The Seven Overarching Standards for Valid Just  
30 Valuations.” ~~the eight factors that must be considered in arriving at just valuations of all~~  
31 ~~property.~~

32  
33 Regarding section 193.011, in 1963, the Legislature enacted the initial version of the  
34 first seven just valuation factors, effective January 1, 1964. See Chapter 63-250, Laws of  
35 Florida, creating Section 193.021, F.S., which was re-numbered in 1969 as Section 193.011,  
36 F.S., by Chapter 69-55, Laws of Florida.

37  
38 In 1965, the Florida Supreme Court held that just value was synonymous with fair  
39 market value and defined fair market value as: “*the amount a purchaser willing but not*  
40 *obliged to buy, would pay to one willing but not obliged to sell.*” See Walter v. Schuler, 176  
41 So.2d 81 (Fla. 1965).

42  
43 \* Neither the term “fair market value” nor the term “market value” appears in the  
44 Florida Constitution. The term “just valuation” appears in the constitution once and  
45 the term “just value” appears in the constitution a total of 22 times, all of which terms  
46 appear in Article VII pertaining to the valuation of property for ad valorem taxation.

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1 \* NOTE: The eighth just valuation criterion did not exist at the time of Walter v.  
2 Schuler. The Legislature can override decisional law. See Dept. of Environmental  
3 Protection v. Contractpoint Florida Parks, 986 So.2d 1260, 1269 (Fla. 2008).

4  
5 Then, in 1967, the legislature added the eighth just valuation criterion (net proceeds of  
6 sale) as a new Subsection 193.021(8), Florida Statutes. See Chapter 67-167, Laws of  
7 Florida, creating Subsection 193.021(8), F.S., which was re-numbered in 1969 as Subsection  
8 193.011(8), F.S., by Chapter 69-55, Laws of Florida.

9  
10 Subsection 193.011(8), F.S., generally known as the “eighth criterion,” was last  
11 amended in 1979 and is presented below in its entirety.

12  
13 *“The net proceeds of the sale of the property, as received by the seller, after deduction*  
14 *of all of the usual and reasonable fees and costs of the sale, including the costs and*  
15 *expenses of financing, and allowance for unconventional or atypical terms of financing*  
16 *arrangements. When the net proceeds of the sale of any property are utilized, directly or*  
17 *indirectly, in the determination of just valuation of realty of the sold parcel or any other*  
18 *parcel under the provisions of this section, the property appraiser, for the purposes of*  
19 *such determination, shall exclude any portion of such net proceeds attributable to*  
20 *payments for household furnishings or other items of personal property.”*

21  
22 \* The eighth criterion must be properly considered in the just valuation of tangible  
23 personal property. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd  
24 DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

25  
26 NOTE: More information on the eighth criterion is presented later in this section and in  
27 the last two sections of this module.

28  
29 ~~In 2007, the United States Supreme Court held that appraisal is an “applied science.”~~  
30 ~~See CSX Transportation, Inc. v. Georgia State Board of Equalization, 552 U.S. 9 (2007).~~

31  
32 ~~The following excerpt states that mass appraisal is a combination of science and art,~~  
33 ~~and requires sound judgment. See Fundamentals of Mass Appraisal (Kansas City, MO:~~  
34 ~~International Association of Assessing Officers, 2011), pages 135–136.~~

35  
36 ● ~~“Thus, modeling is a combination of the proper application of statistical tools~~  
37 ~~(science) and market experience and sound judgment (art).”~~

38  
39 ~~The following two excerpts describe the context and application of sound appraisal~~  
40 ~~judgment in the appraisal process. See Uniform Appraisal Standards for Federal Land~~  
41 ~~Acquisition 2016 (Appraisal Foundation), pages 204 and 203, respectively.~~

42  
43 ● ~~“Appraisers must exercise sound judgment based on known pertinent facts and~~  
44 ~~circumstances, and it is their responsibility to obtain knowledge of all pertinent facts~~  
45 ~~and circumstances that can be acquired with diligent inquiry and search. They must~~  
46 ~~then weigh and consider the relevant facts, exercise sound judgment, and develop~~



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1 ~~an opinion that is completely unbiased by any consideration favoring either the~~  
2 ~~landowner or the government.”~~

- 3  
4 ● ~~“Serving this important function requires expertise, diligence, sound judgment, and~~  
5 ~~objectivity...”~~  
6

7 Judgment is not a substitute for appraisal expertise, diligence, or objectivity. Sound  
8 appraisal judgment must be exercised in accordance with applicable legal criteria  
9 including professionally accepted appraisal practices. See Section 194.301(1), F.S., and  
10 Darden Restaurants, Inc. v. Singh, 266 So.3d 228 (Fla. 5th DCA 2019), referring to “professional  
11 judgment” in just valuations under 2009 legislation that amended Section 194.301, F.S.  
12

13  
14 Note: As indicated following, the property appraiser’s discretion is not unbridled and is  
15 limited by several other provisions of law including Sections 194.301 and 194.3015,  
16 F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).  
17

18 Several Florida court decisions have described the limitations on the property  
19 appraiser’s discretion, including the five indicated below:  
20

- 21 1. ~~The statute on just valuation factors (now Section 193.011, F.S.) was not intended to~~  
22 ~~give property appraisers unbridled discretion; rather, the statute’s purpose is to~~  
23 ~~require property appraisers to adhere to the constitutional mandate of just valuation.~~  
24 ~~See Walter v. Schuler, 176 So.2d 81 (Fla. 1965); Section 193.011, F.S.; and Chapter 67-167,~~  
25 ~~Laws of Florida, creating Subsection 193.021(8), F.S., which was re-numbered in 1969 as~~  
26 ~~Subsection 193.011(8), F.S., by Chapter 69-55, Laws of Florida.~~  
27
- 28 2. ~~The property appraiser’s discretion is limited by the standard of just valuation and by~~  
29 ~~the statutory criteria for just valuation (now Section 193.011, F.S.). See Keith~~  
30 ~~Investments, Inc. v. James, 220 So.2d 695 (Fla. 4th DCA 1969).~~  
31
- 32 3. ~~The statutory valuation criteria are intended to limit the property appraiser’s~~  
33 ~~discretion and to tie the property appraiser more closely to the uniform constitutional~~  
34 ~~standard of just valuation. See Cassady v. McKinney, 296 So.2d 94 (Fla. 2nd DCA 1974).~~  
35
- 36 4. ~~The property appraiser’s discretion is limited by the constitutional requirement for a~~  
37 ~~just valuation and by statute (Section 193.011, F.S.). See In re Steffen, 342 B.R. 861~~  
38 ~~(Bkrtey. M.D. Fla. 2006).~~  
39
- 40 5. ~~The property appraiser’s discretion is limited by professionally accepted appraisal~~  
41 ~~practices. See Darden Restaurants, Inc. v. Singh, 266 So.3d 228 (Fla. 5th DCA 2019), citing~~  
42 ~~Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521),~~  
43 ~~which requires that the assessment methodology comply with professionally accepted~~  
44 ~~appraisal practices.~~  
45

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~~The property appraiser is required to consider, but is not required to use, all three approaches to value. See Mastroianni v. Barnett Banks, Inc., 664 So.2d 284 (Fla. 1st DCA 1995) review denied 673 So.2d 29 (Fla. 1996).~~

~~\* Note: However, a presumption of correctness for the assessment will not be established if the property appraiser does not prove by a preponderance of the evidence that the just value was developed in compliance with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.~~

~~The property appraiser's valuation methodology must comply with the criteria in Section 193.011, F.S., and professionally accepted appraisal practices. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and Section 193.011, F.S.~~

Florida law defines real property as land, buildings, fixtures, and all other improvements to land. See Subsection 192.001(12), F.S.

Florida law defines personal property as being divided into the following four categories: 1) household goods, 2) intangible personal property, 3) inventory, and 4) tangible personal property. See Subsection 192.001(11), F.S.

Subsection 193.011(8), F.S., states the following in pertinent part: "*When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.*"

The eighth criterion provides for the deduction of personal property in arriving at net proceeds of sale of real property, but does not specifically address the deduction of personal property to arrive at net proceeds of sale of tangible personal property.

\* However, the Florida Supreme Court found that it is unconstitutional for a property appraiser to include intangible personal property value in the just valuation of tangible personal property. See Havill v. Scripps Howard Cable Co., 742 So.2d 210 (Fla. 1998).

\* Given this decision and the statutory definition of personal property that includes intangible personal property, the personal property component of the eighth criterion must be properly considered in the just valuation of tangible personal property.

The just value of personal property types other than tangible personal property must be excluded from just valuations of tangible personal property.

1 **Definition of Tangible Personal Property (TPP)**

2 *“Tangible personal property” means all goods, chattels, and other articles of value (but*  
3 *does not include the vehicular items enumerated in s. 1(b), Art. VII of the State*  
4 *Constitution and elsewhere defined) capable of manual possession and whose chief*  
5 *value is intrinsic to the article itself. ‘Construction work in progress’ consists of those*  
6 *items of tangible personal property commonly known as fixtures, machinery, and*  
7 *equipment when in the process of being installed in new or expanded improvements to*  
8 *real property and whose value is materially enhanced upon connection or use with a*  
9 *preexisting, taxable, operational system or facility. Construction work in progress shall*  
10 *be deemed substantially completed when connected with the preexisting, taxable,*  
11 *operational system or facility. Inventory and household goods are expressly excluded*  
12 *from this definition.” See Subsection 192.001(11)(d), F.S.*  
13  
14

15 **Exemptions for Tangible Personal Property**

16 Chapter 196, Florida Statutes, exempts certain property from the TPP tax.

17  
18 Exempt property may be subject to TPP return filing requirements.

19  
20 TPP may be exempt only if it meets the requirements for an exemption set forth in  
21 Chapter 196, Florida Statutes.

22  
23 NOTE: For those interested, more information on exemptions for tangible personal  
24 property is presented in Module 9 of this training. However, appraiser special  
25 magistrates are not required to complete Module 9 of this training.  
26  
27

28 **Requirement for Taxpayers to File TPP Returns**

29 A TPP return (Form DR-405) is a Florida Department of Revenue form that owners of  
30 certain TPP are required by law to complete and file with the property appraiser each  
31 year by April 1st, unless a lawful extension has been granted.  
32

33 Form DR-405 can be viewed on the Department’s website at the following link:

34 <http://floridarevenue.com/dor/property/tpp/>  
35

36 Owners of TPP valued at \$25,000 or less may receive a filing waiver from the property  
37 appraiser upon filing an initial return.  
38

39 Florida law provides for financial penalties when TPP returns are not lawfully filed. See  
40 Sections 193.072 and 196.183, F.S.  
41

42 The TPP return contains information that the property appraiser may consider in arriving  
43 at just value.  
44

45 The TPP return is the property appraiser’s primary data collection method for TPP  
46 characteristics.

1  
2 Other data collection methods, such as physical inspections, may be used when  
3 necessary.

4  
5 A TPP assessment may not be contested with the Board unless the required TPP return  
6 was timely filed with the property appraiser. The term “timely filed” means filed by the  
7 deadline established in section 193.062, F.S., or before the expiration of any extension  
8 granted under section 193.063, F.S. If notice is mailed pursuant to section  
9 193.073(1)(a), F.S., a complete return must be submitted under section 193.073(1)(a),  
10 F.S., for the assessment to be contested. See Subsection 194.034(1)(j), F.S.

11  
12  
13 **The Eight Factors of Just Valuation in Section 193.011, F.S.**

14 After the landmark 2009 legislation, the eight just valuation factors in section 193.011  
15 are now incorporated into section 194.301 in three places and must be applied together  
16 with the other just valuation standards in sections 194.301 and 194.3015, F.S., and in  
17 other applicable law, so that each standard is given lawful meaning.

18  
19 Section 193.011, Florida Statutes, provides the following on just valuation.

20  
21 ***“Factors to consider in deriving just valuation.*** – *In arriving at just valuation as*  
22 *required under s. 4, Art. VII of the State Constitution, the property appraiser shall take*  
23 *into consideration the following factors:*

24  
25 (1) *The present cash value of the property, which is the amount a willing purchaser*  
26 *would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash*  
27 *or the immediate equivalent thereof in a transaction at arm's length;*

28  
29 (2) *The highest and best use to which the property can be expected to be put in the*  
30 *immediate future and the present use of the property, taking into consideration the*  
31 *legally permissible use of the property, including any applicable judicial limitation, local*  
32 *or state land use regulation, or historic preservation ordinance, and any zoning*  
33 *changes, concurrency requirements, and permits necessary to achieve the highest and*  
34 *best use, and considering any moratorium imposed by executive order, law, ordinance,*  
35 *regulation, resolution, or proclamation adopted by any governmental body or agency or*  
36 *the Governor when the moratorium or judicial limitation prohibits or restricts the*  
37 *development or improvement of property as otherwise authorized by applicable law.*  
38 *The applicable governmental body or agency or the Governor shall notify the property*  
39 *appraiser in writing of any executive order, ordinance, regulation, resolution, or*  
40 *proclamation it adopts imposing any such limitation, regulation, or moratorium;*

41  
42 (3) *The location of said property;*

43  
44 (4) *The quantity or size of said property;*

45  
46 (5) *The cost of said property and the present replacement value of any improvements*  
47 *thereon;*

1  
2 (6) *The condition of said property;*

3  
4 (7) *The income from said property; and*

5  
6 (8) *The net proceeds of the sale of the property, as received by the seller, after*  
7 *deduction of all of the usual and reasonable fees and costs of the sale, including the*  
8 *costs and expenses of financing, and allowance for unconventional or atypical terms of*  
9 *financing arrangements. When the net proceeds of the sale of any property are utilized,*  
10 *directly or indirectly, in the determination of just valuation of realty of the sold parcel or*  
11 *any other parcel under the provisions of this section, the property appraiser, for the*  
12 *purposes of such determination, shall exclude any portion of such net proceeds*  
13 *attributable to payments for household furnishings or other items of personal property.”*

14  
15 Section 193.011 is now part of the determinative just valuation standards provided in  
16 sections 194.301 and 194.3015 and in other applicable law, as explained in the next  
17 section titled “The Seven Overarching Standards for Valid Just Valuations.”

### 18 19 **Proper Consideration of the Just Valuation Factors**

20 ~~Section 193.011, Florida Statutes, states that property appraisers must consider the~~  
21 ~~factors of just valuation.~~

22  
23 ~~Florida court decisions have used the terms *lawfully, properly, duly, and carefully* to~~  
24 ~~describe the standard of care required of property appraisers in considering each of the~~  
25 ~~eight factors.~~

26  
27 ~~\* For example, one court decision used the terms *lawfully* and *properly* to describe the~~  
28 ~~property appraiser’s standard of care. See Mazourek v. Wal-Mart Stores, 831 So.2d 85~~  
29 ~~(Fla. 2002).~~

30  
31 ~~\* Another court decision used the term *duly* to describe the property appraiser’s~~  
32 ~~standard of care. See Atlantic International Investment Corp. v. Turner, 383 So.2d 919~~  
33 ~~(Fla. 5th DCA 1980).~~

34  
35 ~~\* Other court decisions and the Florida Attorney General have used the terms~~  
36 ~~*carefully* and *careful* to describe the property appraiser’s standard of care for~~  
37 ~~considering each of the eight factors.~~

38  
39 ~~\* The property appraiser is required to *carefully* consider each factor and give each~~  
40 ~~factor the weight justified by the facts, but is not required to give each factor equal~~  
41 ~~weight. See Lanier v. Walt Disney World Co., 316 So.2d 59 (Fla. 4th DCA 1975), and~~  
42 ~~Daniel v. Canterbury Towers, Inc., 462 So.2d 497 (Fla. 2nd DCA 1985). Also, see Florida~~  
43 ~~Attorney General’s Opinion AGO 77-106, September 29, 1977.~~

44  
45 ~~\* “*Just value is to be determined by giving careful consideration to each of the factors*~~  
46 ~~*contained in s. 193.011 and by giving such weight to a factor as a particular factual*~~

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1 *situation may justify.” See Florida Attorney General’s Opinion AGO 77-106, September*  
2 *29, 1977.*

3  
4 ~~After lawfully considering the factors, the property appraiser may discard entirely any~~  
5 ~~factor that is not probative (indicative) of just value under the circumstances, as long as~~  
6 ~~the appraisal methodology used complies with professionally accepted appraisal~~  
7 ~~practices. See Mazourek v. Wal-Mart Stores, 831 So.2d 85 (Fla. 2002), and Section 194.301,~~  
8 ~~F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). Also, see In re~~  
9 ~~Steffen, 342 B.R. 861 (Bkrctcy. M.D. Fla. 2006).~~

10  
11 ~~However, the property appraiser cannot simply “out of hand” reject, without careful~~  
12 ~~consideration, a just valuation factor as being inappropriate in a particular case. See~~  
13 ~~Daniel v. Canterbury Towers, Inc., 462 So.2d 497 (Fla. 2nd DCA 1985).~~

14  
15 ~~In administrative reviews, the property appraiser is responsible for proving by a~~  
16 ~~preponderance of the evidence that he or she complied with Section 193.011, F.S., by~~  
17 ~~properly considering each of the eight factors in developing original just valuations. See~~  
18 ~~Subsection 194.301(1), F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill~~  
19 ~~521).~~

20  
21 ~~If the property appraiser does not prove by a preponderance of the evidence that he or~~  
22 ~~she properly considered each of the eight factors in developing the just value~~  
23 ~~assessment, the Board or special magistrate must conclude that the property appraiser~~  
24 ~~did not establish a presumption of correctness for the assessment. See Subsection~~  
25 ~~194.301(1), F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).~~

### **The Seven Overarching Standards for Valid Just Valuations**

26  
27  
28 The 2009 statutory changes in sections 194.301 and 194.3015, F.S., greatly increased  
29 the standard of care (level of diligence) for the county appraiser’s development and  
30 reporting of just valuations for ad valorem taxation in Florida.

31  
32  
33 The 2009 changes also established four additional, determinative statutory standards  
34 for valid just valuations, as follows: 1) compliance with professionally accepted appraisal  
35 practices, 2) avoidance of arbitrarily different appraisal practices within groups of  
36 comparable property within the same county, 3) avoidance of superseded case law, and  
37 4) correct application of an appropriate appraisal methodology.

38  
39 Under Florida’s current legal framework for just valuations, there are seven overarching  
40 standards for valid just valuations. These seven standards must be read and applied  
41 together, so that each is given appropriate and lawful meaning in light of the facts.

42  
43 Compliance with these seven standards requires the appraiser to correctly apply the  
44 appraisal process and “...this important function requires expertise, diligence, sound  
45 judgment, and objectivity...” See Uniform Appraisal Standards for Federal Land Acquisition  
46 2016 (Appraisal Foundation), page 203.

47

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1 These seven overarching standards are listed and described below.

2  
3 **1. Compliance with Professionally Accepted Appraisal Practices for Appraisal**  
4 **Development and Appraisal Reporting**

5  
6 The section 194.301 standard of professionally accepted appraisal practices applies to  
7 the entire appraisal process that includes both appraisal development and appraisal  
8 reporting, each of which are addressed separately below.

9  
10 Professionally accepted appraisal practices require appraisers to recognize and comply  
11 with current laws and regulations that apply to the appraiser or to the appraisal  
12 assignment. See Competency Rule, *Uniform Standards of Professional Appraisal Practice,*  
13 *2020-2021 Edition (USPAP), page 11.*

14  
15 Compliance with professionally accepted appraisal practices encompasses compliance  
16 with all other law comprising the seven overarching standards.

17  
18 Professionally accepted appraisal practices comprise a voluminous set of practices set  
19 forth in thousands of pages of professional appraisal references. The current edition of  
20 USPAP is a set of standards consisting of 58 pages that address both appraisal and  
21 appraisal review for all types of property.

22  
23 Thus, the two are not the same thing because the professionally accepted appraisal  
24 practices standard is much more extensive and detailed than USPAP.

25  
26 While USPAP is a useful source of information on professionally accepted appraisal  
27 practices, it not a substitute for such practices.

28  
29 Key Elements of Appraisal Development  
30 Under Professionally Accepted Appraisal Practices

31  
32 In the context of Florida ad valorem tax law, appraisal development is the act, by an  
33 appraiser, of applying the appraisal process to arrive at valid just valuations.

34  
35 “Relevant characteristics” is a core appraisal term defined as: “features that may  
36 affect a property’s value or marketability such as legal, economic, or physical  
37 characteristics.” See Definitions, *Uniform Standards of Professional Appraisal Practice,*  
38 *2020-2021 Edition (Washington, DC: The Appraisal Foundation), page 5.*

39  
40 Under professionally accepted appraisal practices, the three categories of appraisal  
41 data that must be applied in the appraisal process are: legal, physical, and economic.  
42 See Standard 5, Mass Appraisal Development, *Uniform Standards of Professional Appraisal*  
43 *Practice, 2020-2021 Edition, page 33. Also, see section 193.1142(1)(c)2., F.S.*

44  
45 Appraisers are required “to use due diligence and due care.” See Competency Rule,  
46 *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition, page 11.*

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1 An appraiser's valuation must be "based on careful scrutiny of all the data available."  
2 See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007).

3  
4 Appraisers have the "...responsibility to obtain knowledge of all pertinent facts and  
5 circumstances that can be acquired with diligent inquiry and search." See Uniform  
6 Appraisal Standards for Federal Land Acquisition 2016 (Appraisal Foundation), page 204.

7  
8 "The appraiser must be diligent in data collection and competently apply the accepted  
9 methods and techniques of the appraisal profession..." See Uniform Appraisal Standards  
10 for Federal Land Acquisition 2016 (Appraisal Foundation), page 203.

11  
12 For appraisal evidence to support a just valuation, the evidence must be relevant to the  
13 subject property and must satisfy each of the just valuation standards provided in law.

14  
15 The three approaches to just valuation are: 1) the cost less depreciation approach, 2)  
16 the sales comparison approach, and 3) the income capitalization approach.

- 17  
18
  - Each of the three approaches has variants, depending on: 1) the legal, physical, and  
19 economic attributes of the subject property; 2) the availability of appraisal data; and  
20 3) the appropriate appraisal methodology.

21  
22 Generally, property appraisers use mass appraisal techniques to develop just valuations  
23 each year, but property appraisers may also use single-property appraisal techniques.

24  
25 When properly applied in compliance with all requirements of law, both mass appraisal  
26 and single-property appraisal are professionally accepted appraisal practices.

27  
28 It is implicit in mass appraisal that, even when properly specified and calibrated mass  
29 appraisal models are used, some individual value conclusions will not meet standards of  
30 reasonableness, consistency, and accuracy. See Standard 5, Mass Appraisal Development,  
31 Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition, page 37.

32  
33 Regardless of the appraisal approach or technique used to develop a particular just  
34 value, the approach, technique, and value are subject to review to determine whether  
35 the appraisal process complies with all applicable legal standards.

36  
37 Summarized below are some key elements of the standard of care (level of diligence)  
38 for development of just valuations for Florida ad valorem tax purposes:

- 39  
40
  - Identify the legal, physical, and economic attributes of the subject property
  - Identify and comply with all applicable law, and avoid superseded case law
  - Determine the required data, research, and analysis, and identify the professionally  
45 accepted appraisal practices and an appropriate appraisal methodology
- 46



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- 1 • Collect, analyze, and maintain legal, physical, and economic data as necessary for  
2 credible valuations that comply with applicable law
- 3
- 4 • Apply due diligence and due care in the appraisal process, avoid carelessness and  
5 negligence, and avoid significant errors of commission and omission
- 6
- 7 • Comply with each of the 193.011 factors consistent with all other just valuation  
8 standards (avoid cursory consideration of 193.011 factors, correctly apply the factors  
9 needed for a credible and lawful just valuation, and develop professionally accepted  
10 reasons for not applying any factor not applied)
- 11
- 12 • Avoid appraisal practices that are arbitrarily different from the appraisal practices  
13 applied to other comparable property in the same county
- 14
- 15 • Correctly apply an appropriate appraisal methodology that complies with  
16 professionally accepted appraisal practices and each of the other legal standards
- 17
- 18 • Reconcile data and analyses used, and correctly employ quality review procedures
- 19

### Key Elements of Appraisal Reporting Under Professionally Accepted Appraisal Practices

23 Professionally accepted appraisal practices require communicating, or reporting, the  
24 appraisal process used to develop the just valuation. An appraisal report is any  
25 communication, written or oral, about the appraisal process applied in just valuations.

27 Appraisal reporting is part of the appraisal process and is how the appraiser  
28 demonstrates compliance with each of the just valuation standards provided by law.

30 Conclusory statements made by an appraiser reporting an appraisal process are not  
31 sufficient and are not credible. See *Scripps Howard Cable Co. v. Havill*, 665 So.2d 1071,  
32 1077 (Fla. 5th DCA 1995), approved, 742 So.2d 210 (Fla. 1998).

34 The text, *Fundamentals of Mass Appraisal*, published in 2011 by the International  
35 Association of Assessing Officers, pages 4-5, lists appraisal reporting as part of the  
36 appraisal process and then states in pertinent part:

38 *“Professional standards, however, require all appraisers to work systematically,*  
39 *document their work, communicate their opinions of value clearly, and behave ethically.”*

41 The text, *The Appraisal of Real Estate, Fifteenth Edition*, published in 2020 by the  
42 Appraisal Institute, pages 31 and 37, lists appraisal reporting as part of the appraisal  
43 process and then states in part as follows:

45 *“The report of the value opinion or conclusion addresses the data analyzed, the*  
46 *methods applied, and the reasoning that led to the value conclusion and does so in a*

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1 manner that enables the intended users to properly understand the appraiser's findings  
2 and conclusions. The objective of the appraisal report is to communicate the valuation  
3 process with sufficient supporting evidence and logic to ensure that the assignment  
4 results are credible for the intended use."

5  
6 Standard 6, Mass Appraisal Reporting, Uniform Standards of Professional Appraisal  
7 Practice, 2020-2021 Edition, page 39, requires appraisers to explain the exclusion of  
8 any of the three approaches to value and to:

9  
10 "provide sufficient information to enable the client and intended users to have  
11 confidence that the process and procedures used conform to accepted methods and  
12 result in credible value conclusions."

13  
14 A recent trial court judgment states as follows regarding appraisal reporting:

15  
16 "The 2009 legislation requires the Court to determine whether the appraiser used an  
17 appropriate methodology in making the assessment. To allow the Court to make this  
18 determination, the property appraiser must present sufficient evidence that describes  
19 the appraisal methodology and explains how and why it was applied in valuing the  
20 Subject Property. Under section 194.301(1), the appraiser has the burden of going  
21 forward and presenting testimonial and documentary evidence explaining how the  
22 appraiser satisfied each of the just valuation criteria."

23 See Dillard's, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).

24  
25 Summarized below are some key elements of the standard of care (level of diligence)  
26 for just valuation reporting:

- 27
- 28 • Must provide meaningful disclosure of procedures applied in the appraisal process
- 29
- 30 • Must be relevant to the legal, physical, and economic attributes of the property, each  
31 of the applicable legal criteria, and the appraisal process
- 32
- 33 • Must be credible in the context of Florida ad valorem property tax appraisal
- 34
- 35 • Must be clear and accurate to enable intended users to understand the appraisal  
36 process
- 37
- 38 • Must include explanations and reasons, addressing each of the valuation approaches  
39 and each of the applicable legal criteria, regarding what was actually done and how  
40 and why, in developing the just value
- 41
- 42 • Must provide lawful and professionally accepted explanations and reasons for not  
43 applying a legal criterion or not applying an appraisal approach
- 44
- 45 • Must be sufficient for intended users to understand how and why the just value was  
46 developed via the methodology used
- 47

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- 1 • Must avoid misleading statements, conclusory statements, and superseded case law  
2

### 2. Compliance with Each of the Just Valuation Factors in Section 193.011, F.S.

3

4  
5 After the landmark 2009 legislation, the eight just valuation factors in section 193.011  
6 are now incorporated into section 194.301 in three places.  
7

- 8 • These eight just valuation factors must now be applied together with the other just  
9 valuation standards in sections 194.301 and 194.3015, F.S., and in other applicable  
10 law, so that each standard is given professionally accepted and lawful meaning.  
11

- 12 • The method of just valuation and the weight to be given to each of the section  
13 193.011 factors is now governed solely by: 1) the legal, physical, and economic  
14 characteristics of the subject property; 2) the four additional determinative standards  
15 in sections 194.301 and 194.3015, F.S.; and 3) all other applicable law.  
16

- 17 • In just valuations under current law, it is necessary to actually apply the section  
18 193.011 factors that are appropriate for compliance with the four new determinative  
19 standards in sections 194.301 and 194.3015 and all other applicable law.  
20

- 21 • Under the dictates of section 194.301 and 194.3015, F.S., for any section 193.011  
22 factor not applied in a particular just valuation, the appraiser must report a clear,  
23 logical, fact-based, and professionally accepted reason for excluding the factor.  
24

25 Pre-2009 just valuation case law is replete with obsolete statements indicating a much  
26 lower level of diligence (standard of care) for developing and reporting just valuations  
27 than required by current law, and these obsolete statements must be avoided.  
28

29 Just valuation evidence, including evidence intended to show the property appraiser's  
30 compliance with each of the section 193.011 factors, "must be real, material, pertinent,  
31 and relevant evidence, as opposed to ethereal, metaphysical, speculative, theoretical,  
32 or hypothetical, and it must have definite probative value." See Singh v. Walt Disney  
33 Parks, --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).  
34

35 The legal, physical, and economic characteristics of the subject property must be  
36 reflected in the appraisal data applied for the eight factors in section 193.011 and must  
37 be applied in all just valuation approaches.  
38

39 The appraiser's compliance with legal standards, including the just valuation  
40 factors in section 193.011, must be demonstrated in the appraisal data, analyses,  
41 practices, and methods used to develop and report just valuations.  
42

43 Appraisal approaches (methods), the application of legal standards including the section  
44 193.011 factors, and the validity of resulting values are interconnected and cannot  
45 logically be separated.  
46

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1 In administrative reviews, the overarching legal standards should be applied in  
2 determining whether the appraisal methodology used in making a value  
3 assessment is appropriate under the circumstances and this, in turn, should be  
4 applied in determining whether the value assessment is valid.

5  
6 Below are two examples of how court decisions have correctly applied the section  
7 193.011 factors in reviewing appraisal methodology and resulting just valuations.

- 8  
9
  - Though these examples are pre-2009, they show the connection between legal  
10 criteria, appraisal methods, and values, and are used here for that purpose.

11  
12 Example 1: The court's decision described a mathematical connection between  
13 "erroneous consideration" of statutory criteria, an "improper" appraisal method, and  
14 an excessive value. See Holly Ridge Ltd. Partnership v. Pritchett, 936 So.2d 694, 697-  
15 698 (Fla. 5th DCA 2006), rehearing denied.

16  
17 Example 2: The court's decision connected the appraisal method, the application of  
18 legal criteria, and the rejection of an appraised value, in holding as follows:

19  
20 "The trial court rejected the appellants' appraisal because it found that their appraisal  
21 method failed to take into consideration all the factors set forth in section 193.011,  
22 Florida Statutes (1981)."

23  
24 "Failure to consider one or more of the factors set forth in section 193.011 is sufficient to  
25 invalidate an appraisal done by a tax assessor..."

26  
27 "We also think the lower court correctly rejected appellants' appraisal because the  
28 method used was too speculative."

29  
30 See Muckenfuss v. Miller, 421 So.2d 170, 173-174 (Fla. 5th DCA 1982), petition for review  
31 denied, 430 So.2d 450, 451 (Fla. 1983).

### 32 33 **3. Avoidance of Arbitrarily Different Appraisal Practices Within Groups of** 34 **Comparable Property Within the Same County.**

35  
36 Section 194.301(2)(a)3., F.S., provides that to withstand judicial or administrative  
37 review, a just valuation cannot be: "...arbitrarily based on appraisal practices that are  
38 different from the appraisal practices generally applied by the property appraiser to  
39 comparable property within the same county."

40  
41 Along similar lines, section 195.0012, F.S., expresses legislative intent for assessment  
42 uniformity including "...uniform assessment as between property within each county..."

43  
44 The U.S. Supreme Court has also emphasized that "the uniformity and equality required  
45 by law" is of paramount concern in property assessment valuations. See Sioux City  
46 Bridge Co. v. Dakota Cty. Neb., 260 U.S. 441, 446-47 (1923), cited in Southern Bell Tel. & Tel.  
47 Co. v. Dade Cty., 275 So. 2d 4, 8 (Fla. 1973).

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1  
2 Avoiding arbitrarily different appraisal practices within groups of comparable property  
3 within the same county supports the goal of assessment uniformity.

4  
5 Selective reappraisal is an example of arbitrarily different appraisal practices. The text,  
6 Mass Appraisal of Real Property, published in 1999 by the International Association of  
7 Assessing Officers, page 315, explains selective reappraisal, stating in pertinent part:

8  
9 “The reliability of sales ratio statistics depends on unsold parcels being appraised in the  
10 same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio  
11 results, possibly rendering them useless. Equally important, selective reappraisal of  
12 sold parcels (“sales chasing”) is a serious violation of basic appraisal uniformity and is  
13 highly unprofessional.”

14  
15 Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See  
16 Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).

### 4. Avoidance of Superseded Case Law.

17  
18  
19  
20 In 2009, the Florida Legislature made crystal clear its intent to supersede case law that  
21 is inconsistent with legislative enactments in sections 194.301 and 194.3015, F.S.

22  
23 The 2009 enactments re-engineered the development, reporting, and review of just  
24 valuations in Florida. Yet, in some cases, these major statutory changes have not been  
25 applied in practice and this continues to be a serious problem.

26  
27 Pre-2009 case law, as well as some post-2009 legal arguments based on obsolete pre-  
28 2009 case law, do NOT reflect the major statutory changes enacted in 2009.

29  
30 For public trust to exist in the VAB process, VABs, VAB attorneys, and special  
31 magistrates must understand and act in accordance with this landmark legislation and  
32 must be diligent in avoiding the use of obsolete case law in the VAB process.

33  
34 The last sentence in subsection 194.301(1), F.S., now states: “The provisions of this  
35 subsection preempt any prior case law that is inconsistent with this subsection.”

36  
37 Further, section 194.3015, F.S., now states in its entirety:

38  
39 “(1) It is the express intent of the Legislature that a taxpayer shall never have the  
40 burden of proving that the property appraiser’s assessment is not supported by any  
41 reasonable hypothesis of a legal assessment. All cases establishing the every-  
42 reasonable-hypothesis standard were expressly rejected by the Legislature on the  
43 adoption of chapter 97-85, Laws of Florida. It is the further intent of the Legislature that  
44 any cases published since 1997 citing the every-reasonable-hypothesis standard are  
45 expressly rejected to the extent that they are interpretive of legislative intent.”

46  
47 “(2) This section is intended to clarify existing law and apply retroactively.”

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1  
2 In 1997, the Florida Legislature, in an attempt to implement fairness for property  
3 taxpayers, enacted the original version of section 194.301, F.S., stating in pertinent part:

4  
5 *“In no case shall the taxpayer have the burden of proving that the property appraiser’s*  
6 *assessment is not supported by any reasonable hypothesis of a legal assessment.”*

7  
8 In the 1996 to 1998 period, multiple law articles addressed issues in the assessment  
9 appeal process and legislative efforts to address fairness for property taxpayers.

10  
11 In 2001, despite the 1997 enactment of section 194.301, F.S., in Wal-Mart v. Todora,  
12 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the court issued a decision that actually applied  
13 the “reasonable hypothesis” standard, stating:

14  
15 *“Because there are so many well-recognized approaches for arriving at an appraisal,*  
16 *the appraiser’s decision may be overturned only if there is no reasonable hypothesis to*  
17 *support it.”*

18  
19 In 2002, again despite the 1997 enactment of section 194.301, in Mazourek v. Wal-  
20 Mart, 831 So. 2d 85, 91 (Fla. 2002), the court extended the error by quoting the 2001  
21 decision in Wal-Mart v. Todora, likewise stating:

22  
23 *“Because there are so many well-recognized approaches for arriving at an appraisal,*  
24 *the appraiser’s decision may be overturned only if there is no reasonable hypothesis to*  
25 *support it.”*

26  
27 In 2006, the decision from In re Lifestream Technologies, LLC, 337 B.R. 705, 710  
28 (Bkrtcy. M.D. Fla. 2006) further extended the same error by quoting from Mazourek,  
29 instead of following the Legislature’s 1997 directive in section 194.301, F.S.

30  
31 Then, in 2009, the Florida Legislature completely amended section 194.301 and created  
32 section 194.3015, addressing in both the problem of superseded case law.

33  
34 In 2013 in CVS EGL Fruitville Sarasota FL, LLC and Holiday CVS, LLC. v. Todora, 124  
35 So. 3d 289 (Fla. 2d DCA 2013), the Second District Court of Appeal admitted the error it  
36 made in the aforementioned 2001 case of Wal-Mart v. Todora, and explained how this  
37 error was extended when the Florida Supreme Court quoted the error in its  
38 aforementioned 2002 decision in Mazourek v. Wal-Mart.

39  
40 Also, in CVS EGL, the Second District Court explained an example of the legislative  
41 intent behind the 2009 enactments in sections 194.301 and 194.3015, stating:

42  
43 *“Because the legislature rejected the application of “any cases published since 1997*  
44 *citing the every-reasonable-hypothesis standard,” it follows that the legislature intended*  
45 *to supersede Todora and Mazourek. We must therefore give deference to the*  
46 *legislature and conclude that Todora and Mazourek are not controlling.”*

47

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1 In July 2016, the difficulty with applying sections 194.301 and 194.3015 appeared in a  
2 final judgment (Singh v. Darden Restaurants, Inc.) where the trial court erred because it  
3 failed to apply standards in sections 194.301 and 194.3015, and instead applied  
4 obsolete case law standards based on assessment “discretion.”

5  
6 Then, in Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019),  
7 the Fifth District Court overturned the July 2016 trial judgment and explained how the  
8 trial judgment erroneously applied pre-2009 case law, stating in pertinent part:

9  
10 “...in its final judgment, the trial court cited to language from Mazourek v. Wal-Mart  
11 Stores, Inc., 831 So. 2d 85, 89 (Fla. 2002), that “[t]he property appraiser’s determination  
12 of assessment value is an exercise of administrative discretion within the officer’s field  
13 of expertise.” The Mazourek decision preceded the 2009 amendment to section  
14 194.301, Florida Statutes, where the Legislature articulated that the value of property  
15 must be determined by an appraisal methodology that met the criteria of section  
16 193.011 and professionally accepted appraisal practices.”

### Other Examples of Superseded Case Law

17  
18  
19  
20 The holdings in some court decisions based on the legislatively rejected “reasonable  
21 hypothesis” standard show an interconnection between such standard and the obsolete  
22 concomitant (attendant) standards that also appeared in such holdings.

23  
24 For example, in CVS EGL (2013), the court rejected the concomitant standard of “within  
25 the range of reasonable appraisals” because of its interconnection with the legislatively  
26 rejected “reasonable hypothesis” standard.

27  
28 Eight examples of superseded case law are listed and described below.

29  
30 None of these superseded standards is harmless because they unequivocally reflect a  
31 lower standard of care and diligence for developing, reporting, and reviewing just values  
32 than the standards required by current law in sections 194.301 and 194.3015.

33  
34 VABs, VAB attorneys, and special magistrates must be diligent to avoid using any of  
35 these types of superseded standards and to reject any arguments espousing them.

### **Superseded Concomitant Standard No. 1:**

36  
37  
38 “the core issue in any action challenging a tax assessment is the  
39 amount of the assessment, not the methodology utilized in arriving at the valuation”

40  
41 In Bystrom v. Whitman, 488 So. 2d 520, 521 (Fla. 1986), the court applied this obsolete  
42 standard together with the rejected “reasonable hypothesis” standard.

43  
44 In 2007 in CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007), the U.S.  
45 Supreme Court emphasized the necessity of reviewing appraisal methodology in  
46 valuations disputes, stating: “We do not see how a court can go about determining true  
47 market value if it may not look behind the State’s choice of valuation methods.”

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1  
2 In 2009, the Legislature enacted four new determinative just valuation standards, each  
3 providing methodological requirements for developing and reviewing just valuations.  
4

### **Superseded Concomitant Standard No. 2:**

5 *“within the range of reasonable appraisals”*  
6  
7

8 In Blake v. Xerox, 447 So. 2d 1348 (Fla. 1984), the court equated this obsolete  
9 concomitant standard with the *“reasonable hypothesis”* standard, stating:  
10

11 *“Regardless of which method was theoretically superior, the trial court was bound to*  
12 *uphold the appraiser’s determination if it was lawfully arrived at and within the range of*  
13 *reasonable appraisals, that is, if it was supported by any reasonable hypothesis of*  
14 *legality.”*  
15

16 In CVS EGL (2013), the court applied section 194.3015 in overturning a trial judgment  
17 that had used the legislatively rejected *“reasonable hypothesis”* standard and its  
18 concomitant standard of *“within the range of reasonable appraisals,”* stating:  
19

20 *“At no point during the trial court’s application of these standards should it consider*  
21 *whether the assessment is within the range of reasonable appraisals or whether it is*  
22 *supported by any reasonable hypothesis of legality.”*  
23

### **Superseded Concomitant Standard No. 3:**

24 *“[t]he property appraiser’s determination of assessment value*  
25 *was an exercise of administrative discretion within the officer’s field of expertise”*  
26  
27

28 In Blake v. Xerox, 447 So. 2d 1348, 1350 (Fla. 1984), the decision linked this old  
29 standard with the legislatively rejected *“reasonable hypothesis”* standard.  
30

31 This obsolete statement runs afoul of diligence requirements in the current standards of  
32 professionally accepted appraisal practices and appropriate appraisal methodologies.  
33

34 In Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019), the  
35 court recognized this concomitant standard as being obsolete since 2009.  
36

### **Superseded Concomitant Standard No. 4:**

37 *“the method of valuation and the weight*  
38 *to be given each factor is left to the appraiser’s discretion”*  
39  
40

41 In Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the holding linked this  
42 obsolete standard with the legislatively rejected *“reasonable hypothesis”* standard and  
43 with the superseded *“within the range of reasonable appraisals”* standard.  
44

45 In its 2007 decision in CSX, the U.S. Supreme Court emphasized the necessity of  
46 reviewing appraisal methodology in ad valorem tax valuation disputes, stating: *“We do*



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1 not see how a court can go about determining true market value if it may not look  
2 behind the State's choice of valuation methods."

3  
4 In 2009, the Legislature enacted four new determinative just valuation standards, each  
5 providing methodological requirements for developing and reviewing just valuations.

6  
7 The valuation method and the weight actually given to each section 193.011 factor can  
8 be proven only by the actual application and reporting of an appropriate appraisal  
9 process that complies with all applicable law and results in a valid just valuation.

10  
11 Thus, under current law, the valuation method and the weight given to each section  
12 193.011 factor are governed solely by the legal, physical, and economic characteristics  
13 of the subject property and by the appropriate application of all just valuation standards  
14 in sections 194.301 and 194.3015 and all other applicable law.

### **Superseded Concomitant Standard No. 5:**

15  
16  
17 "The determination of just value inherently and necessarily requires  
18 the exercise of appraisal judgment and broad discretion by Florida property appraisers."

19  
20 In Fla. Department of Revenue v. Howard, 916 So. 2d 640 (Fla. 2005), the decision  
21 references the two preceding obsolete statements based on "discretion," along with this  
22 third variant of the obsolete "discretion" standard.

23  
24 This "discretion" variant was based on decades-old legal concepts from a time when the  
25 now legislatively rejected "reasonable hypotheses" standard held sway.

26  
27 Notably, the term "discretion" does not appear in the 2020-2021 edition of the Uniform  
28 Standards of Professional Appraisal Practice and, likewise, does not appear in the  
29 widely cited appraisal text, The Appraisal of Real Estate, 15th Edition, published in 2020  
30 by the Appraisal Institute.

31  
32 Regarding "appraisal judgment," key excerpts from the Uniform Appraisal Standards for  
33 Federal Land Acquisition 2016, published by the Appraisal Foundation, pages 203-204,  
34 describe the diligent application of sound appraisal judgment in the appraisal process:

35  
36 "Serving this important function requires expertise, diligence, sound judgment, and  
37 objectivity..."

38  
39 "The appraiser must be diligent in data collection and competently apply the accepted  
40 methods and techniques of the appraisal profession..."

41  
42 "Appraisers must exercise sound judgment based on known pertinent facts and  
43 circumstances, and it is their responsibility to obtain knowledge of all pertinent facts and  
44 circumstances that can be acquired with diligent inquiry and search. They must then  
45 weigh and consider the relevant facts, exercise sound judgment, and develop an  
46 opinion that is completely unbiased by any consideration favoring either the landowner  
47 or the government."

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1  
2 Thus, appraisal judgment is NOT a substitute for appraisal expertise, diligence, or  
3 objectivity. For valid just valuations, appraisal judgment must be sound and must be  
4 applied in compliance with the seven overarching standards for valid just valuations.

### **Superseded Concomitant Standard No. 6:**

7 “Appraisal is an art, not a science”

8  
9 In 1969 in Powell v. Kelly 223 So. 2d 305 (Fla. 1969), court applied this obsolete  
10 standard along with the legislatively rejected “reasonable hypothesis” standard.

11  
12 In its 2007 decision on ad valorem appraisal methodology, the U.S. Supreme Court held  
13 that appraisal is an “applied science.” See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552  
14 U.S. 9 (2007), 552 U.S. 9 (2007).

15  
16 On appraisal being a science, Appendix A of the widely cited textbook, *The Appraisal of*  
17 *Real Estate, 15th Edition*, published in 2020 by the Appraisal Institute, states:

18  
19 “Professional appraisal practice applies the scientific processes of economic analyses  
20 (i.e., the valuation process) to develop conclusions in an impartial, objective manner,  
21 without bias or any desire on the part of appraisers to accommodate their own interests  
22 or the interests of their clients. To form sound conclusions, appraisers avoid personal  
23 beliefs or biases and search for market evidence to support their appraisal opinions. It is  
24 this level of independence and freedom from either personal views or personal financial  
25 gain, and strict adherence to the scientific principles contained in the valuation process,  
26 that separate the profession of appraisal from other fields that also deal with real estate  
27 values.”

### **Superseded Concomitant Standard No. 7:**

28  
29  
30 “Because there are so many well-recognized approaches for arriving at an appraisal...”

31  
32 In Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the Second District Court  
33 ignored section 194.301 and applied this obsolete concomitant standard together with  
34 the now legislatively rejected “reasonable hypothesis” standard, stating:

35  
36 “Because there are so many well-recognized approaches for arriving at an appraisal,  
37 the appraiser’s decision may be overturned only if there is no reasonable hypothesis to  
38 support it.”

39  
40 Then, in CVS EGL (2013), the Second District Court admitted its 2001 error in Wal-Mart  
41 v. Todora and applied section 194.3015 in overturning a May 2012 trial judgment that  
42 had erroneously applied these superseded standards.

### **Superseded Concomitant Standard No. 8:**

43  
44  
45 “an appraiser may reach a correct result for the wrong reason”

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1 In City National Bank v. Blake, 257 So. 2d 264 (Fla. 3d DCA 1972), the court equated  
2 this concomitant standard with the now legislatively rejected “reasonable hypothesis”  
3 standard, stating:

4  
5 “A tax assessment is presumed correct, and in order to successfully challenge it, the  
6 taxpayer must present proof which excludes every reasonable hypothesis of a legal  
7 assessment. That is, an assessor may reach a correct result for the wrong reason.”

8  
9 This old standard was rendered obsolete by the U.S. Supreme Court’s 2007 decision in  
10 CSX and by Florida’s enactments in sections 194.301 and 194.3015, F.S.

### 11 **5. Compliance with All Other Applicable Law.**

12  
13  
14 Other applicable law includes just valuation standards for particular situations. These  
15 standards may exist in Florida Statutes or in currently applicable case law.

16  
17 Examples of other just valuation standards from statutes include the following:

18  
19 • Section 192.042(2), F.S., provides the January 1 date of assessment and provides  
20 that construction work in progress shall have no value placed thereon until  
21 substantially completed as defined in section 192.001(11)(d), F.S.

22  
23 • Section 193.016, F.S., provides as follows regarding valuations of tangible personal  
24 property:

25  
26 “If the property appraiser’s assessment of the same items of tangible personal  
27 property in the previous year was adjusted by the value adjustment board and the  
28 decision of the board to reduce the assessment was not successfully appealed by  
29 the property appraiser, the property appraiser shall consider the reduced values  
30 determined by the value adjustment board in assessing those items of tangible  
31 personal property.”

32  
33 “If the property appraiser adjusts upward the reduced values previously determined  
34 by the value adjustment board, the property appraiser shall assert additional basic  
35 and underlying facts not properly considered by the value adjustment board as the  
36 basis for the increased valuation notwithstanding the prior adjustment by the board.”

37  
38 Other applicable law may also include current case law standards such as:

39  
40 • Case law specifies fee simple estate as the interest to be appraised in just valuations.  
41 See Schultz v. TM Fla.-Ohio Realty, Ltd., 577 So.2d 573 (Fla. 1991), and see Dept. of  
42 Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 (Fla. 1977).

43  
44 • Case law precludes just valuation methods that include intangible value. See Scripps  
45 Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), and see Singh v. Walt Disney Parks,  
46 --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).

1 **6. Correct Application of an Appropriate Appraisal Methodology**

2  
3 After its 2009 amendment, section 194.301(1), F.S., provides in pertinent part:

4  
5 “However, a taxpayer who challenges an assessment is entitled to a determination by  
6 the value adjustment board or court of the appropriateness of the appraisal  
7 methodology used in making the assessment. The value of property must be  
8 determined by an appraisal methodology that complies with the criteria of s. 193.011  
9 and professionally accepted appraisal practices. The provisions of this subsection  
10 preempt any prior case law that is inconsistent with this subsection.”

11  
12 An appropriate appraisal methodology is one that: 1) identifies and is appropriately  
13 based on the legal, physical, and economic characteristics of the subject property, 2)  
14 complies with overarching standards one through five, and 3) is correctly applied.

15  
16 In Scripps Howard Cable Co. v. Havill, 665 So. 2d 1071 (Fla. 5th DCA 1995), approved,  
17 742 So. 2d 210 (Fla. 1998), the court held that the appraisal method under review was  
18 not appropriate under the circumstances and certified the following question:

19  
20 “Is the Income/Unit Rule Method of Appraisal an Appropriate Method of Assessing the  
21 Tangible Personal Property of Television Cable Companies?”

22  
23 Then, in Scripps Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), the Florida  
24 Supreme Court answered the certified question in the negative and approved the  
25 decision of the Fifth District, holding that the method was not appropriate because it  
26 unlawfully included the value of intangible property.

27  
28 In 2007, the U.S. Supreme Court held that disputes over ad valorem tax values require  
29 review of the appraisal methodology. See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552  
30 U.S. 9 (2007), 552 U.S. 9 (2007) (“We do not see how a court can go about determining true  
31 market value if it may not look behind the State’s choice of valuation methods”).

32  
33 In August 2020, the court issued its final decision in Singh v. Walt Disney Parks, ---  
34 So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020), stating in pertinent part:

35  
36 “At trial, the parties agreed that the income approach to value was a  
37 professionally accepted appraisal practice and provided the most reliable  
38 indicator of value, but they disputed the proper methodology for performing such  
39 an assessment.”

40  
41 “Moreover, it ruled that even if the Rushmore method was a professionally accepted  
42 appraisal practice, it could not be used in a manner that violated Florida law. The trial  
43 court concluded that by including value attributable to Disney business activities on the  
44 Property, Appraiser applied the Rushmore method in a way that violated Florida law.”

45

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1 “We agree with the trial court that Appraiser, in the manner in which he applied the  
2 Rushmore method, impermissibly included the value of Disney’s intangible business  
3 assets in its assessment.”

4  
5 The Disney decision shows even if an appraisal practice is professionally accepted in  
6 other contexts, it cannot be applied in a manner that violates another part of Florida law.

7  
8 Later, in October 2020, a trial court issued a final judgment stating as follows regarding  
9 appropriate appraisal methodology.

10  
11 “The Property Appraiser failed to prove by a preponderance of the evidence that his  
12 assessment was arrived at by utilizing methodology complying with section 193.011 and  
13 professionally accepted appraisal practices. Additionally, the Court finds the Property  
14 Appraiser’s sole reliance on a cost approach without considering and preparing at least  
15 one of an income and/or sales comparison approach for the Subject Property type was  
16 not an appropriate appraisal methodology used in making the assessment.”

17 See Dillard’s, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).

### 18 19 **7. A Just Valuation Developed and Reported in Compliance with Overarching** 20 **Standards One through Six and Supported by a Preponderance of the Relevant** 21 **and Credible Evidence**

22  
23 For a just valuation to withstand the scrutiny of review, it must be developed and  
24 reported in compliance with overarching standards one through six and must be  
25 supported by a preponderance of the relevant and credible just valuation evidence.

### 26 27 28 **Consideration of Previous Year’s Board-Adjusted Assessment**

29 Section 193.016, Florida Statutes, provides the following.

30  
31 “Property appraiser’s assessment; effect of determinations by value adjustment  
32 board.—If the property appraiser’s assessment of the same items of tangible  
33 personal property in the previous year was adjusted by the value adjustment  
34 board and the decision of the board to reduce the assessment was not  
35 successfully appealed by the property appraiser, the property appraiser shall  
36 consider the reduced values determined by the value adjustment board in  
37 assessing those items of tangible personal property. If the property appraiser  
38 adjusts upward the reduced values previously determined by the value  
39 adjustment board, the property appraiser shall assert additional basic and  
40 underlying facts not properly considered by the value adjustment board as the  
41 basis for the increased valuation notwithstanding the prior adjustment by the  
42 board.”

43  
44 \* This statute was upheld by the Florida Supreme Court. See Department of Revenue v.  
45 Howard, 916 So.2d 640 (Fla. 2005).

1  
2  
3 **Petitioner Not Required to Present Opinion or Estimate of Value**

4 The petitioner is not required to provide an opinion or estimate of just value.

5  
6 No provision of law requires the petitioner to present an opinion or estimate of value.

7  
8 The Board or special magistrate is not authorized to require a petitioner to provide an  
9 opinion or estimate of just value.

10  
11 The petitioner has the option of choosing whether to present an opinion or estimate of  
12 just value.

13  
14  
15 **Presentation of Evidence by the Parties**

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

19  
20 An appraisal report shall not be submitted as evidence in a value adjustment board  
21 proceeding in any tax year in which the person who performed the appraisal serves as a  
22 special magistrate to that county value adjustment board for the same tax year. See  
23 Rule 12D-9.025(4)(g), F.A.C.

24  
25 Under Subsection 194.301(1), F.S., in a hearing on just value, the first issue to be  
26 considered is whether the property appraiser establishes a presumption of correctness.

27  
28 \* The property appraiser shall present evidence on this issue first. See Rule 12D-  
29 9.024(7), F.A.C.

30  
31 \* While the property appraiser is required to present evidence on this issue first, the  
32 Board or special magistrate must allow the petitioner a chance to present evidence  
33 on this issue before deciding whether the presumption of correctness is established.

34  
35 *"In a Board or special magistrate hearing, the petitioner is responsible for presenting*  
36 *relevant and credible evidence in support of his or her belief that the property*  
37 *appraiser's determination is incorrect."* See Rule 12D-9.025(3)(a), F.A.C.

38  
39 If the property appraiser establishes a presumption of correctness by proving by a  
40 preponderance of the evidence that the just value assessment was arrived at by  
41 complying with Section 193.011, F.S., and professionally accepted appraisal practices,  
42 including mass appraisal standards, if appropriate, the petitioner must prove by a  
43 preponderance of the evidence that:

44  
45 1. The property appraiser's just valuation does not represent just value; or  
46

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1 2. The property appraiser's just valuation is arbitrarily based on appraisal practices that  
2 are different from the appraisal practices generally applied by the property appraiser  
3 to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as  
4 amended by Chapter 2009-121, Laws of Florida (House Bill 521).

5  
6 However, if the property appraiser does not establish a presumption of correctness  
7 because he or she did not prove by a preponderance of the evidence that the just  
8 valuation was arrived at by complying with Section 193.011, F.S., and professionally  
9 accepted appraisal practices, including mass appraisal standards, if appropriate, the  
10 Board or special magistrate must take one of the two following actions:

- 11  
12 1. If the record contains competent substantial evidence of just value that cumulatively  
13 meets the requirements of Section 193.011, F.S., and professionally accepted  
14 appraisal practices, the Board or special magistrate must establish a revised just  
15 value; or  
16  
17 2. If the record lacks such competent substantial evidence, the Board or special  
18 magistrate must remand the assessment to the property appraiser with appropriate  
19 directions with which the property appraiser must comply.  
20  
21

### **Evaluation of Evidence by the Board or Special Magistrate**

22 Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special  
23 magistrate must:  
24

- 25  
26 1. Review the evidence presented by the parties;  
27  
28 2. Determine whether the evidence presented is admissible;  
29  
30 3. Admit the evidence that is admissible;  
31  
32 4. Identify the evidence presented to indicate that it is admitted or not admitted; and  
33  
34 5. Consider the admitted evidence.  
35

36 The term "admitted evidence" means evidence that has been admitted into the record  
37 for consideration by the Board or special magistrate. See Rule 12D-9.025(2)(a), F.A.C.  
38

39 *"No evidence shall be considered by the board or special magistrate except when*  
40 *presented and admitted during the time scheduled for the petitioner's hearing, or at a*  
41 *time when the petitioner has been given reasonable notice."* See Rule 12D-9.025(4)(a),  
42 F.A.C.  
43

44 *"If a party submits evidence to the board clerk prior to the hearing, the board or special*  
45 *magistrate shall not review or consider such evidence prior to the hearing."* See Rule  
46 12D-9.025(4)(b), F.A.C.  
47

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1 Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:

- 2
- 3 1. *“As the trier of fact, the board or special magistrate may independently rule on the*
- 4 *admissibility and use of evidence.”*
- 5
- 6 2. *“If the board or special magistrate has any questions relating to the admissibility and*
- 7 *use of evidence, the board or special magistrate should consult with the board legal*
- 8 *counsel.”*
- 9
- 10 3. *“The basis for any ruling on admissibility of evidence must be reflected in the*
- 11 *record.”*
- 12
- 13 4. *“The special magistrate may delay ruling on the question during the hearing and*
- 14 *consult with board legal counsel after the hearing.”*
- 15

16 The Board or special magistrate shall consider the admitted evidence. See Rule 12D-  
17 9.025(1)(d), F.A.C.

18  
19 A property owner generally is qualified, on account of ownership, to testify regarding the  
20 just value of his or her property. See In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006).

21  
22 NOTE: More information on the admissibility of evidence is presented in Module 4 of  
23 this training.

### 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 The Florida Supreme Court stated the following regarding sufficient evidence:  
35 *“Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character,*  
36 *weight, or amount, as will legally justify the judicial or official action demanded.”* See  
37 Tibbs v. State, 397 So.2d 1120 (Fla. 1981). Also, see Moore v. State, 800 So.2d 747 (Fla. 5th  
38 DCA 2001).

39  
40 A particular conclusion is justified when the overall weight of the admitted evidence  
41 meets the standard of proof that applies to the issue under consideration. See Rule 12D-  
42 9.027(6), F.A.C.

43  
44 The Board or special magistrate must consider the admitted evidence and determine  
45 whether it is sufficiently relevant and credible to reach the “preponderance of the  
46 evidence” standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-  
47 9.027(5), and 12D-9.027(6), F.A.C.



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1  
2 Rule 12D-9.027(6), F.A.C., states the following in pertinent part: *“In determining*  
3 *whether the admitted evidence is sufficient for a particular issue under consideration,*  
4 *the board or special magistrate shall:*

- 5  
6 (a) *Consider the relevance and credibility of the admitted evidence as a whole,*  
7 *regardless of which party presented the evidence;*  
8  
9 (b) *Determine the relevance and credibility, or overall weight, of the evidence;*  
10  
11 (c) *Compare the overall weight of the evidence to the standard of proof;*  
12  
13 (d) *Determine whether the overall weight of the evidence is sufficient to reach the*  
14 *standard of proof; and*  
15  
16 (e) *Produce a conclusion of law based on the determination of whether the overall*  
17 *weight of the evidence has reached the standard of proof.”*

18  
19 For administrative reviews of just valuations, “relevant evidence” is evidence that is  
20 reasonably related, directly or indirectly, to the statutory criteria that apply to the just  
21 valuation of the petitioned property. See Rule 12D-9.025(2)(b), F.A.C.

22  
23 \* This description means the evidence meets or exceeds a minimum level of  
24 relevance necessary to be admitted for consideration, but does not necessarily  
25 mean that the evidence has sufficient relevance to legally justify a particular  
26 conclusion. See Rule 12D-9.025(2)(b), F.A.C.

27  
28 In evaluating the relevance of evidence, the Board or special magistrate must consider,  
29 as of the January 1 assessment date, how well the evidence relates to the petitioned  
30 property and to the statutory criteria found in Section 193.011, F.S., and in Section  
31 194.301, F.S.

32  
33 For administrative reviews of just valuations, “credible evidence” means evidence that is  
34 worthy of belief (believable). See *Black’s Law Dictionary, Eighth Edition*, page 596.

35  
36 NOTE: More information on evaluating the relevance and credibility of evidence is  
37 presented in Module 11 of this training.

38  
39 By itself, the property record card is not sufficient evidence for establishing a  
40 presumption of correctness for the assessment under Subsection 194.301(1), F.S.

41  
42 Materials describing the general appraisal practices of the property appraiser alone,  
43 without discussing how those practices were applied to the assessment at issue, are not  
44 sufficient to establish a presumption of correctness for the assessment. See Property Tax  
45 Informational Bulletin PTO 09-29.

46

1 The approval of an assessment roll by the Department of Revenue is not evidence that  
2 a particular assessment was made in compliance with statutory requirements and is not  
3 sufficient to establish a presumption of correctness for the assessment. See Property Tax  
4 Informational Bulletin PTO 09-29.

5  
6  
7 **Requirements for Establishing a Presumption of Correctness**

8 A presumption of correctness for the assessment is not established unless the property  
9 appraiser proves by a preponderance of the evidence that the property appraiser's just  
10 valuation methodology complies with Section 193.011, F.S., and professionally  
11 accepted appraisal practices, including mass appraisal standards, if appropriate. See  
12 Rule 12D-9.027(2)(a), F.A.C.

13  
14 A presumption of correctness for the assessment is established only when the property  
15 appraiser proves by a preponderance of the evidence that the property appraiser's just  
16 valuation methodology complies with Section 193.011, F.S., and professionally  
17 accepted appraisal practices, including mass appraisal standards, if appropriate.

18  
19  
20 **Requirements for Overcoming a Presumption of Correctness**

21 If the property appraiser establishes a presumption of correctness, the petitioner can  
22 overcome the presumption of correctness by proving by a preponderance of the  
23 evidence one of the following:

- 24  
25 1. The property appraiser's just valuation does not represent just value; or  
26  
27 2. The property appraiser's just valuation is arbitrarily based on appraisal practices that  
28 are different from the appraisal practices generally applied by the property appraiser  
29 to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as  
30 amended by Chapter 2009-121, Laws of Florida (House Bill 521).

31  
32 If the property appraiser establishes a presumption of correctness and the petitioner  
33 does not overcome the presumption of correctness as described above, the  
34 assessment stands.

35  
36  
37 **Establishing a Revised Just Value or Remanding the Assessment**

38 If the property appraiser does not establish a presumption of correctness for the  
39 assessment, or if the petitioner overcomes the presumption of correctness, the Board or  
40 special magistrate must take one of the two following actions:

- 41  
42 1. If the record contains competent substantial evidence of just value that cumulatively  
43 meets the requirements of Section 193.011, F.S., and professionally accepted  
44 appraisal practices, the Board or special magistrate must establish a revised just  
45 value; or  
46

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- 1 2. If the record lacks such competent substantial evidence, the Board or special  
2 magistrate must remand the assessment to the property appraiser with appropriate  
3 directions with which the property appraiser must comply.  
4

5 NOTE: Information on the procedural requirements for remanded assessments is  
6 presented in Module 5 of this training.  
7  
8

### 9 **Competent Substantial Evidence for Establishing a Revised Just 10 Value**

11 Competent substantial evidence for establishing a revised just value, as part of an  
12 administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:  
13

- 14 1. Cumulatively meets the criteria of Section 193.011, F.S., and professionally  
15 accepted appraisal practices;  
16  
17 2. Tends to prove (is probative of) just value as of January 1 of the assessment year  
18 under review;  
19  
20 3. Is sufficiently relevant and credible to be accepted as adequate to support (legally  
21 justify) the conclusion reached; and  
22  
23 4. Otherwise meets all requirements of law.  
24  
25

### 26 **Establishment of Revised Just Values in Administrative Reviews**

27 The Board or special magistrate is required to establish a revised just value under either  
28 of the two following conditions:  
29

- 30 1. The property appraiser does not establish a presumption of correctness for the  
31 assessment and the hearing record contains competent substantial evidence for  
32 establishing a revised just value as described above; or  
33  
34 2. The petitioner overcomes a presumption of correctness established by the property  
35 appraiser and the hearing record contains competent substantial evidence for  
36 establishing a revised just value as described above.  
37

38 Within their scope of authority, the Board or special magistrate shall establish a revised  
39 just value based upon the competent substantial evidence for establishing a revised just  
40 value. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House  
41 Bill 521).  
42

43 Prior to 2009 and the adoption of House Bill 521, Section 194.301, F.S., provided that  
44 the Board may establish the assessment when authorized.  
45

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1 However, the current statute, effective for administrative reviews in 2009, specifically  
2 requires that the Board shall establish the just value when authorized by law. See Section  
3 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

4  
5 *“In establishing a revised just value, the board or special magistrate is not restricted to*  
6 *any specific value offered by one of the parties.”* See Rule 12D-9.027(2)(b)3.a., F.A.C.

7  
8 In establishing a revised just value when required by law, Boards and special  
9 magistrates are not required, and are not authorized, to complete an independent  
10 valuation approach.

11  
12 The establishment of a revised just value does not require the evidence necessary to  
13 complete an independent valuation approach.

14  
15 The establishment of a revised just value only requires enough evidence to legally  
16 justify making an adjustment to the property appraiser’s original just valuation.

17  
18 In establishing a revised just value when required by law, Boards and special  
19 magistrates are authorized to make the necessary calculations.

### 20 21 22 **Sequence of General Procedural Steps**

23 This section sets forth below a sequence of general procedural steps for Boards and  
24 special magistrates to follow in administrative reviews of just valuations in order to fulfill  
25 the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.

26  
27 This sequence of steps applies to: the consideration of evidence, the development of  
28 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

29  
30 *“The board or special magistrate shall not be required to make, at any time during a*  
31 *hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See  
32 Rule 12D-9.025(9), F.A.C.

33  
34 *“The board or special magistrate has the discretion to determine whether to make such*  
35 *determinations during a hearing or to consider the petition and evidence further after the*  
36 *hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.

37  
38 In following this sequence of steps, Boards or special magistrates must also meet the  
39 requirements of Rule 12D-9.025(1), F.A.C., which are the following:

- 40  
41 \* Review the evidence presented by the parties;  
42  
43 \* Determine whether the evidence presented is admissible;  
44  
45 \* Admit the evidence that is admissible; and  
46  
47 \* Identify the evidence presented to indicate that it is admitted or not admitted.

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1  
2 The sequence of general procedural steps presented below is based on Rule 12D-  
3 9.027(2), F.A.C. The sequence of general procedural steps is as follows.

- 4  
5 1. Consider the admitted evidence presented by the parties.  
6  
7 2. Identify and consider the essential characteristics of the petitioned property based on  
8 the admitted evidence and the factors in Section 193.011, F.S.  
9  
10 3. Identify the appraisal methodology used by the property appraiser in developing his  
11 or her just valuation of the petitioned property, and consider this appraisal  
12 methodology in light of the essential characteristics of the petitioned property.  
13  
14 4. Determine whether the admitted evidence proves by a preponderance of the  
15 evidence that the property appraiser's methodology complies with Section 193.011,  
16 F.S., and professionally accepted appraisal practices, including mass appraisal  
17 standards, if appropriate.  
18  
19 5. Determine whether the property appraiser's appraisal methodology is appropriate  
20 and whether the property appraiser established a presumption of correctness for the  
21 assessment.  
22  
23 a) The property appraiser's just valuation methodology is not appropriate and a  
24 presumption of correctness is not established unless the admitted evidence  
25 proves by a preponderance of the evidence that the property appraiser's just  
26 valuation methodology complies with Section 193.011, F.S., and professionally  
27 accepted appraisal practices, including mass appraisal standards, if appropriate.  
28  
29 b) The property appraiser's just valuation methodology is appropriate and the  
30 presumption of correctness is established only when the admitted evidence  
31 proves by a preponderance of the evidence that the property appraiser's just  
32 valuation methodology complies with Section 193.011, F.S., and professionally  
33 accepted appraisal practices, including mass appraisal standards, if appropriate.  
34  
35 6. If the Board or special magistrate determines that a presumption of correctness is  
36 established, the Board or special magistrate must then determine whether the  
37 admitted evidence proves by a preponderance of the evidence that:  
38  
39 a) The property appraiser's just valuation does not represent just value; or  
40  
41 b) The property appraiser's just valuation is arbitrarily based on appraisal practices  
42 that are different from the appraisal practices generally applied by the property  
43 appraiser to comparable property within the same county.  
44  
45 7. If the Board or special magistrate determines that one or both of the conditions  
46 specified under Step 6 exist, the presumption of correctness is overcome.  
47

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- 1 8. If the property appraiser does not establish a presumption of correctness, or if the  
2 presumption of correctness is overcome, the Board or special magistrate must  
3 determine whether the hearing record contains competent, substantial evidence of  
4 just value which cumulatively meets the criteria of Section 193.011, F.S., and  
5 professionally accepted appraisal practices.  
6
- 7 a) If the hearing record contains competent, substantial evidence for establishing a  
8 revised just value, the Board or an appraiser special magistrate must establish a  
9 revised just value based only upon such evidence. In establishing a revised just  
10 value, the Board or special magistrate is not restricted to any specific value  
11 offered by one of the parties.  
12
- 13 b) If the hearing record lacks competent, substantial evidence for establishing a  
14 revised just value, the Board or special magistrate must remand the assessment  
15 to the property appraiser with appropriate directions for establishing just value.  
16 The property appraiser is required to follow these directions.  
17
- 18 9. If the property appraiser establishes a presumption of correctness as described in  
19 Step 5 above and that presumption of correctness is not overcome as described in  
20 Step 6 above, the assessment stands.  
21  
22

### **Operation of the Eighth Criterion Under Florida Law**

24 Subsection 193.011(8), F.S., known as the “eighth criterion,” requires proper  
25 consideration of the “net proceeds of sale.” The “eighth criterion” was last amended in  
26 1979 and is presented below in its entirety.  
27

28 *“The net proceeds of the sale of the property, as received by the seller, after deduction  
29 of all of the usual and reasonable fees and costs of the sale, including the costs and  
30 expenses of financing, and allowance for unconventional or atypical terms of financing  
31 arrangements. When the net proceeds of the sale of any property are utilized, directly or  
32 indirectly, in the determination of just valuation of realty of the sold parcel or any other  
33 parcel under the provisions of this section, the property appraiser, for the purposes of  
34 such determination, shall exclude any portion of such net proceeds attributable to  
35 payments for household furnishings or other items of personal property.”*  
36

37 Subsection 193.011(8), F.S., requires proper consideration of the “net proceeds of sale”  
38 of tangible personal property, regardless of whether an actual sale of the property has  
39 occurred. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000)  
40 review denied 780 So.2d 916 (Fla. 2001).  
41

42 In *Oyster Pointe Condo. Assoc., Inc. v. Nolte*, 524 So.2d 415, 418 (Fla. 1988), the  
43 Florida Supreme Court, in holding that timeshare marketing costs were not (under  
44 timeshare statutes at that time) part of the “reasonable fees and costs of sale” under  
45 section 193.011(8), tellingly stated as follows:  
46

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1 “However, as we read section 193.011(8), these costs are not among the “reasonable  
2 fees and costs of sale” contemplated by the legislature to be excluded from the ad  
3 valorem appraisal process.” (underlined emphasis added)  
4

- 5 • This holding is notable because it explains legislative intent for the costs of sale to be  
6 “excluded from the ad valorem appraisal process” without exception.  
7
- 8 • This holding aligns with uniform application of the cost of sale factor, without regard  
9 to whether the property was sold, the property type involved, or the approach used to  
10 value the property.  
11

12 Further, a failure to uniformly apply the “net proceeds of sale” factor would be selective  
13 reappraisal.  
14

15 The text, *Mass Appraisal of Real Property*, published in 1999 by the International  
16 Association of Assessing Officers, page 315, describes the highly undesirable practice  
17 of selective reappraisal as follows:  
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.” (underlined emphasis added)  
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 ~~However, the statute does not require the property appraiser to select the value~~  
29 ~~generated by the application of Subsection 193.011(8), F.S., and apply it in a blanket~~  
30 ~~fashion to all assessments. See *Turner v. Tokai Financial Services, Inc.*, 767 So.2d 494 (Fla.~~  
31 ~~2nd DCA 2000) review denied 780 So.2d 916 (Fla. 2001).~~  
32

33 ~~There is no legal requirement that the net proceeds of sale constitute the deciding factor~~  
34 ~~in just valuation. See *In re Steffen*, 342 B.R. 861 (Bkrtey. M.D. Fla. 2006).~~  
35

36 ~~The use of net sales price alone, without considering and weighing other factors, is~~  
37 ~~legally insufficient to constitute compliance with the mandate of Section 193.011, F.S.~~  
38 ~~See Florida Attorney General’s Opinion AGO 77-106, September 29, 1977.~~  
39

40 The eighth criterion must be properly considered in the just valuation of tangible  
41 personal property. See *Turner v. Tokai Financial Services, Inc.*, 767 So.2d 494 (Fla. 2nd DCA  
42 2000) review denied 780 So.2d 916 (Fla. 2001).  
43

- 44 \* In administrative reviews of tangible personal property just valuations, Boards and  
45 special magistrates must also properly consider the eighth criterion.  
46

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1 However, Florida law does not provide for the same information regarding the eighth  
2 criterion on tangible personal property assessment rolls as for real property rolls.

3  
4 \* There are no recorded selling prices for tangible personal property as there are for  
5 real property.

6  
7 \* Property appraisers are not required to report selling prices for tangible personal  
8 property to the Department as they are required to do for real property.

9  
10 NOTE: More information on the eighth criterion and the just valuation of tangible  
11 personal property is presented earlier in this module in the section titled "Florida  
12 Information on Appraisal Development."

13  
14

### 15 **The Eighth Criterion in Reviews of Tangible Personal Property**

16 In the development of tangible personal property assessment rolls, property appraisers  
17 are responsible for properly considering the eighth criterion in the just valuation of  
18 tangible personal property.

19  
20 In administrative reviews of just valuations of tangible personal property, the parties are  
21 responsible for presenting relevant and credible evidence, in accordance with law,  
22 regarding how the eighth criterion applies to the just valuation of tangible personal  
23 property.

24  
25 Boards and special magistrates are responsible for determining, based on admitted  
26 evidence and in accordance with law, how the eighth criterion applies in administrative  
27 reviews of just valuations of tangible personal property.

### 28 29 **~~(NEW) Appraisal by Special Magistrate May Not Be Submitted as~~** 30 **~~Evidence~~**

31 ~~Legislation enacted in 2020 amended section 194.035, F.S. to provide an appraisal~~  
32 ~~performed by a special magistrate is not permitted as evidence in a hearing before a~~  
33 ~~value adjustment board for which the special magistrate serves. An appraisal may not~~  
34 ~~be submitted as evidence to a value adjustment board in any year that the person who~~  
35 ~~performed the appraisal serves as a special magistrate to that value adjustment board.~~  
36 ~~See Chapter 2020-10, Section 4, Laws of Florida, effective July 1, 2020.~~



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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

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

4  
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 • ~~Agricultural Equipment Unusable for at Least 60 Days Due to Hurricane Michael~~

19  
20 **PART 4: Administrative Reviews of Determinations of Changes of**  
21 **Ownership or Control or Qualifying Improvement**

- 22 • Assessment Increase Limitation for Homestead Real Property  
23 • Assessment Increase Limitation for Non-Homestead Real Property

24  
25  
26 **Learning Objectives**

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

- 28  
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  
31 taxable value (see Section 196.031, F.S.)  
32 • Recognize that the disabled veterans discount is deducted after exemptions are  
33 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  
38 appraiser  
39 • Apply the correct procedures for determining whether a denial of an exemption by  
40 the property appraiser is valid  
41 • Apply the correct procedures when a denial of an exemption by the property  
42 appraiser has been determined to be invalid  
43 • Apply the correct procedures when a denial of an exemption by the property  
44 appraiser has been determined to be valid  
45 • Recognize and apply the scope of authority for administrative reviews of denials of  
46 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**

Sections 3, 4, and 6, Article VII, of the Florida Constitution, provide for exemptions and property classifications.

Generally, after the property appraiser has considered the just value of a property and produced an assessed value, the assessed value is then reduced by any exemptions to produce the taxable value.

After the assessed value is correctly determined, the exempt amounts are deducted in the order provided by law (see Section 196.031, F.S.). After that, any discounts, such as the disabled veteran's discount, are applied.

"Exemption" means exemptions under Chapter 196, Florida Statutes, and other Florida Statutes.

\* For purposes of this training, exemptions include the following: veteran's discount, immunity where a claim of tax immunity for government property is being made, and 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

### 41 **Overview of Statutory Criteria**

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.

### 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.



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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.

### 10 11 12 **Evaluation of Evidence by the Board or Special Magistrate**

13 Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special  
14 magistrate must:

- 15  
16 1. Review the evidence presented by the parties;
- 17  
18 2. Determine whether the evidence presented is admissible;
- 19  
20 3. Admit the evidence that is admissible;
- 21  
22 4. Identify the evidence presented to indicate that it is admitted or not admitted; and
- 23  
24 5. Consider the admitted evidence.

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."*

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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

### 10 **Sufficiency of Evidence**

11 When applied to evidence, the term “sufficient” is a test of adequacy. See Rule 12D-  
12 9.027(6), F.A.C.

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  
10 \* Determine whether the denial was valid under Section 196.193, F.S.; and

11  
12 \* If the exemption denial is found to be invalid, not give weight to the exemption  
13 denial or to any evidence supporting the basis for such denial, but shall instead  
14 proceed to dispose of the matter without further consideration in compliance with  
15 Section 194.301, F.S.

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

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

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)(48)~~, 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 an-entire dwelling previously claimed to be a  
4 homestead for tax purposes constitutes abandonment of the dwelling as a homestead,  
5 when the property is rented for more than 30 days per calendar year for two  
6 consecutive years.

7  
8 Abandonment continues until the dwelling is physically occupied by the owner.

9  
10 **Note:** Legislation enacted in 2013 provides that rental of the homestead after January  
11 1 of any year does not affect the homestead exemption for tax purposes for that  
12 particular year unless the property is rented for more than 30 days per calendar year for  
13 two consecutive years. These changes were effective July 1, 2013, and apply to  
14 assessments and administrative reviews beginning in 2014. See Chapter 2013-64, Laws  
15 of Florida (SB 342).

16  
17 This provision does not apply to a member of the Armed Forces of the United States  
18 whose service in such forces is the result of a mandatory obligation imposed by the  
19 federal Selective Service Act or who volunteers for service as a member of the Armed  
20 Forces of the United States.

### 23 **Homestead Exemption: Additional Exemption for Low Income Seniors**

24 The Board of County Commissioners of a county or the governing authority of a  
25 municipality may adopt an ordinance to allow an additional homestead exemption of up  
26 to \$50,000 for any person who has the legal or equitable title to real estate and  
27 maintains thereon the permanent residence of the owner, and who:

- 28  
29 \* Has the legal or equitable title to real estate;  
30 \* Uses that real estate as their permanent residence;  
31 \* Is age 65, or older; and  
32 \* Whose household income does not exceed \$20,000, adjusted annually, beginning  
33 January 1, 2001, by the percentage change in the average cost-of-living index.

34  
35 ~~For the 2017 assessment year, the 2016 adjusted gross household income to qualify for  
36 this exemption is \$28,841 or less.~~

37  
38 For the 2018 assessment year, the 2017 adjusted gross household income to qualify for  
39 this exemption is \$29,454 or less.

40  
41 For the 2019 assessment year, the 2018 adjusted gross household income to qualify for  
42 this exemption is \$30,174 or less.

43  
44 For the 2020 assessment year, the 2019 adjusted gross household income to qualify for  
45 this exemption is \$30,721 or less.

46

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1 For the 2021 assessment year, the 2020 adjusted gross household income to qualify for  
2 this exemption is \$31,100 or less. See section 196.075, F.S., and Rule 12D-7.0143, F.A.C.

3  
4 **Note:** An amendment approved by the voters in the November 2012 general election  
5 added a local option of up to an additional \$50,000 exemption for low income seniors  
6 that have maintained a permanent residence on the property for at least 25 years. See  
7 section 196.075, F.S.

8  
9 **Note:** Legislation enacted in 2021 amended section 196.075(4)(d), and (5), Florida  
10 Statutes, which provides an additional homestead exemption for persons 65 and older.  
11 The amendment to section 196.075(4)(d), F.S., requires an ordinance enacted by a  
12 local government authorizing an additional homestead exemption for low-income  
13 seniors must require the taxpayer to submit a sworn statement of household income  
14 when claiming the exemption for the first time. The amendment to section 196.075(5),  
15 F.S., provides that the property appraiser notifies each taxpayer of the adjusted income  
16 limitation each year. The taxpayer must respond by May 1 if their income exceeds the  
17 limitation. The property appraiser may conduct random audits of the taxpayers' sworn  
18 statements. See Chapter 2021-208, Section 1, Laws of Florida, (HB 597), effective July 1,  
19 2021.

### 20 21 22 **Homestead Exemption: Save Our Homes**

23 Relating to exemptions, the primary limitation on assessment increases is the Save Our  
24 Homes Amendment limitation which caps assessment increases on homestead  
25 property at the lesser of 3 percent or the percentage change in the consumer price  
26 index.

27  
28 When applied to the just value assessment in the initial year when homestead is  
29 established, any subsequent increases in that assessment are capped.

30  
31 Property is reassessed on the transfer of the homestead property.

### 32 33 34 **Homestead Exemption: Damaged or Destroyed Property**

35 See section ~~196.031(6), 193.155(4)~~, F.S.

36 A homestead exemption may be granted to damaged or destroyed property that is  
37 otherwise qualified if the property owner notifies the property appraiser that he or she  
38 intends to repair or rebuild the property and live in the property as his or her primary  
39 residence after the property is repaired or rebuilt and does not claim a homestead  
40 exemption on any other property.

41  
42 Failure by the property owner to begin the repair or rebuilding of the homestead  
43 property within three years after January 1 following the year the property was damaged  
44 or destroyed constitutes abandonment of the property as a homestead.



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1 ~~Changes, additions, or improvements that replace all or a portion of homestead property~~  
2 ~~damaged or destroyed by misfortune or calamity shall not increase the homestead~~  
3 ~~property's assessed value when:~~

4  
5 ~~\* The square footage of the homestead property as changed or improved does not~~  
6 ~~exceed 110 percent of the square footage of the homestead property before the~~  
7 ~~damage or destruction; or~~

8  
9 ~~\* The total square footage of the homestead property as changed or improved does~~  
10 ~~not exceed 1,500 square feet.~~

### 11 12 13 **Homestead Exemption: Living Quarters for Parents or Grandparents**

14 This exemption is found in Section 193.703, F.S. It applies to construction or  
15 reconstruction of a homestead intended to provide living quarters for the owner's parent  
16 or grandparent.

17  
18 The qualifications for this exemption are:

- 19  
20 \* The parent or grandparent must be 62 or older;  
21 \* The parent or grandparent must be the natural or adoptive parent or grandparent of  
22 an owner of the homestead or of an owner's spouse;  
23 \* Application must be made by March 1;  
24 \* Reconstruction or construction must have been made to an existing homestead  
25 property; and  
26 \* The parent or grandparent must make their primary place of residence on the  
27 property and cannot qualify for a separate homestead exemption.

28  
29 If a taxpayer qualifies under the statute, the exemption from taxation is limited to an  
30 amount not to exceed:

- 31  
32 \* Twenty percent of the total assessed value of the property as improved; or  
33 \* The increase in value resulting from the construction or reconstruction.

### 34 35 36 **Homestead Exemption: Totally and Permanently Disabled Persons**

37 See section 196.101, F.S.

38 In order to qualify for a total exemption on their homestead a person must have a  
39 qualifying household income (~~the 2016 household income cannot exceed \$28,115 for~~  
40 ~~the 2017 assessment year,~~ the 2017 household income cannot exceed \$28,713 for the  
41 2018 assessment year, the 2018 household income cannot exceed \$29,415 for the  
42 2019 assessment year, and the 2019 household income cannot exceed \$29,948 for the  
43 2020 assessment year, and the 2020 household income cannot exceed \$30,317 for the  
44 2021 assessment year) and the applicant must be:

- 45  
46 \* Paraplegic;

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- 1 \* Hemiplegic;
- 2 \* Legally blind; or
- 3 \* Totally and permanently disabled and dependent on a wheelchair for mobility.

4  
5 Persons who are quadriplegic qualify for a total exemption on their homestead without  
6 meeting the income limitation.

7  
8 Totally and permanently disabled persons who do not qualify for a total exemption can  
9 receive a \$500 exemption under Section 196.202, F.S. This \$500 exemption is also  
10 granted to widows, widowers, and blind persons.

11  
12

### 13 **Exemptions for Veterans**

14 See sections 196.081, 196.082, 196.091, and 196.24, F.S.

15 Any ex-service member (or qualified surviving spouse) who meets the three criteria  
16 below shall receive a \$5,000 exemption on their property:

17

- 18 \* Is a bona fide resident of the state;
- 19 \* Was discharged under honorable conditions; and
- 20 \* Has been disabled to a degree of 10 percent or higher.

21

22 Any ex-service member (or qualified surviving spouse) requiring specially adapted  
23 housing and required to use a wheelchair for his or her transportation shall be exempt  
24 from taxation on his or her homestead when he or she meets the following criteria:

25

- 26 \* Was honorably discharged with a service-connected total disability certificate; and
- 27 \* Is receiving or has received "special pecuniary assistance".

28

29 Any totally and permanently disabled veteran or qualified surviving spouse shall be  
30 exempt from taxation on his or her homestead when he or she meets the following  
31 criteria:

32

- 33 \* Was honorably discharged with a service-connected total and permanent disability;
- 34
- 35 \* Was issued a letter from the United States Government or United States Department  
36 of Veterans Affairs or its predecessor certifying that the veteran is totally and  
37 permanently disabled; and
- 38
- 39 \* Was a permanent resident of the State of Florida on January 1 of the year in which  
40 the exemption is being claimed (or was a permanent resident on January 1 of the  
41 year of their death).

42

43 This exemption is also granted to the qualified surviving spouse of a veteran who dies  
44 during active duty from service-connected causes provided that the veteran was a  
45 permanent resident of the State of Florida on January 1 of the year he or she died.

46

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1 **Note:** Legislation enacted in 2018 amended section 196.24, F.S., relating to  
2 qualification for an exemption, to remove the statutory requirement for an unremarried  
3 surviving spouse to have been married to a disabled veteran for at least five years on  
4 the date of the veteran's death. See Chapter 2018-118, Section 16, Laws of Florida (CS/HB  
5 7087).

6  
7 **Note:** Legislation enacted in 2020 created section 196.081(1)(b), F.S. to provide that a  
8 veteran or veteran's surviving spouse may receive a prorated refund of property taxes  
9 paid on property on which legal or beneficial title is acquired between January 1 and  
10 November 1. The additional requirements for the refund are that the veteran or  
11 veteran's surviving spouse:

- 12 • receives an exemption under section 196.081, F.S., on a property for the tax  
13 year, and
- 14 • applies for and receives an exemption on the acquired property in the next tax  
15 year under section 196.081, F.S.

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

### 21 22 23 **Exemption for Veterans: Discount for Disabled Veterans**

24 See section 196.082, F.S.

25 In addition to the exemptions listed previously, there is a discount on taxes due on  
26 homestead property available to disabled veterans. In order to qualify, the veteran must  
27 meet the following criteria:

- 28 \* Be 65 or older;
- 29 \* Have a combat-related disability; and
- 30 \* Have been honorably discharged.

31  
32  
33 When a veteran is qualified, the property appraiser shall apply all exemptions to which  
34 the veteran is entitled to the property value, calculate the taxes due on the property, and  
35 then reduce the taxes due by the veteran's percentage of disability.

### 36 37 38 **Exemption for Deployed Servicemembers Beginning in 2011**

39 The 2011 Legislature enacted an exemption for certain servicemembers who receive a  
40 homestead exemption and who are deployed in certain military operations to receive an  
41 additional ad valorem tax exemption.

- 42  
43 \* The percentage exempt under the exemption is calculated as the number of days  
44 the servicemember was deployed during the previous calendar year, divided by the  
45 number of days in that year, multiplied by 100.

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1 \* It applies to both the school and county taxable values, and applies beginning in the  
2 2011 tax year.

3  
4 \* See Chapter 2011-93, Laws of Florida (effective May 31, 2011), creating Section  
5 196.173, F.S.

6  
7 \* See also Rule 12D-7.0055, F.A.C.  
8

9 **Note:** The 2020 Legislature amended section 196.173, F.S., relating to the exemption  
10 for deployed servicemembers, to remove Operation Enduring Freedom, which began  
11 October 7, 2001, and ended December 31, 2014. The amendment added Operation  
12 Juniper Shield, which began in February 2007; Operation Pacific Eagle, which began in  
13 September 2017, and Operation Martillo, which began in January 2012. After the  
14 amendment, this legislation retained the following military operations on the list:  
15

- 16 • Operation Joint Task Force Bravo, which began in 1995.
- 17 • Operation Joint Guardian, which began on June 12, 1999.
- 18 • Operation Noble Eagle, which began on September 15, 2001.
- 19 • Operations in the Balkans, which began in 2004.
- 20 • Operation Nomad Shadow, which began in 2007.
- 21 • Operation U.S. Airstrikes Al Qaeda in Somalia, which began in January 2007.
- 22 • Operation Juniper Shield, which began in February 2007.
- 23 • Operation Copper Dune, which began in 2009.
- 24 • Operation Georgia Deployment Program, which began in August 2009.
- 25 • Operation Spartan Shield, which began in June 2011.
- 26 • Operation Observant Compass, which began in October 2011.
- 27 • Operation Martillo, which began in January 2012.
- 28 • Operation Inherent Resolve, which began on August 8, 2014.
- 29 • Operation Atlantic Resolve, which began in April 2014.
- 30 • Operation Freedom's Sentinel, which began on January 1, 2015.
- 31 • Operation Resolute Support, which began in January 2015.
- 32 • Operation Pacific Eagle, which began in September 2017.

33  
34 See Chapter 2020-10, Sections 7 and 8, Laws of Florida, (HB 7097), effective upon becoming a  
35 law on April 8, 2020, and first applicable to the 2020 ad valorem tax roll, and Chapter 2018-118,  
36 Section 15, Laws of Florida (CS/HB 7087).

- 37  
38 • This exemption is also available to servicemembers who were deployed during  
39 the preceding calendar year on active duty outside the continental United States,  
40 Alaska, or Hawaii in support of a subordinate operation to a main operation  
41 designated in section 196.173(2), F.S.  
42  
43

44 **Exemptions for First Responders Who Were Totally and Permanently**  
45 **Disabled in the Line of Duty, and For Surviving Spouses**

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1 Section 196.081, F.S., provides an exemption for surviving spouses of first responders  
2 who die in the line of duty. See Chapter 2012-54, Laws of Florida (CS/HB 95).

3  
4 **Note:** Legislation enacted in 2017 created section 196.102, F.S., to: provide an  
5 exemption for certain first responders whose total and permanent disability occurred in  
6 the line of duty, and for surviving spouses; extend the exemption application deadline  
7 for 2017 to August 1, 2017, or later if extenuating circumstances are shown; and  
8 provide for petitions to the value adjustment board for denials of such exemptions. This  
9 change was effective June 14, 2017, and applies to assessments and administrative  
10 reviews beginning in 2017. See Chapter 2017-105, Sections 2 and 3, Laws of Florida (CS/HB  
11 455).

### 12 13 14 **Statutory Criteria for Different Types of Institutional Exemptions**

15 These exemptions apply to property other than homestead property. The exemption can  
16 be based either on the ownership of the property, such as governmental property, or the  
17 use of the property, such as educational exemptions.

18  
19 Because of the number of these exemptions, most of the exemptions will not be  
20 discussed in detail. Instead a statutory reference will be provided so the requirements of  
21 that exemption can be found easily.

22  
23 The statutory criteria that apply to several types of personal exemptions are presented  
24 below under their respective headings.

### 25 26 27 **Government Property**

28 See section 196.199, F.S.

29 Governmental property can be immune to taxation, exempt from taxation, or taxable.

30  
31 Property that is immune from taxation is property that the taxing authority has no ability  
32 to tax.

33  
34 Property that is exempt is property that the state, through its constitution, statutes, and  
35 local ordinances, has chosen not to tax.

36  
37 Property belonging to the federal government is immune from taxation.

38  
39 State and county property is also immune from taxation and cannot be taxed unless  
40 immunity has been waived.

41  
42 Municipal property and property belonging to most special districts is exempt from  
43 taxation as long as it is being used for municipal or other exempt purposes.

44

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1 **Note:** Legislation enacted in 2014 moved the exemption for special districts to newly  
2 created section 189.055, F.S., from section 189.403, F.S. See Chapter 2014-22, Section  
3 53, Laws of Florida (SB 1632).

4  
5 Governmental property leased to non-governmental entities may become taxable under  
6 section 196.199, F.S.

7  
8 **Note:** Legislation enacted in 2018 amended section 163.01, F.S. to clarify that the  
9 property tax exemption in this statute applies whether the property is within or outside  
10 the jurisdiction of the legal entity that owns it. The amendment also clarifies that the  
11 exemption applies regardless of whether the legal entity enters into agreements with  
12 private entities to manage, operate or improve the utilities the separate entity owns. See  
13 Chapter 2018-118, Section 7, Laws of Florida (CS/HB 7087).

14  
15 **Note:** Legislation enacted in 2015 added section 196.199(1)(a)2., F.S., to provide an  
16 ad valorem tax exemption for a leasehold interest in and improvements affixed to land  
17 owned by the United States, any branch of the United States Armed Forces, or any  
18 agency or quasi-governmental agency of the United States if the leasehold and  
19 improvements are acquired or constructed and used pursuant to the federal Military  
20 Housing Privatization Initiative of 1996. Any such leasehold interest and improvements  
21 are exempt from ad valorem taxation regardless of whether title is held by the United  
22 States and without necessity of filing an application for the exemption or receiving  
23 approval from the property appraiser. This act defines "improvements" to include actual  
24 housing units and any facilities that are directly related to such housing units, including  
25 any housing maintenance facilities, housing rental and management offices, parks and  
26 community centers, and recreational facilities. This law applies retroactively to January  
27 1, 2007. See Chapter 2015-80, Section 1, Laws of Florida (CS for CS for HB 361).

### 28 29 30 **Exempt Entities**

31 See Sections 196.192, 196.193, 196.194, 196.195, and 196.196, F.S.

32 Exempt entities are nonprofit ventures which serve a charitable, religious, scientific, or  
33 literary purpose.

34  
35 All property owned by an exempt entity and used exclusively for an exempt purpose is  
36 totally exempt.

37  
38 Property owned by an exempt entity and used primarily for an exempt purpose is  
39 exempt to the extent that the ratio of such predominate use bears to the non-exempt  
40 use.

41  
42 Tangible personal property loaned to an exempt entity for public display or exhibition on  
43 a recurring schedule for no, or nominal, consideration, is exempt.

44  
45 **Note:** Legislation enacted in 2021 amended section 196.196(2), Florida Statutes, to  
46 provide that portions of a property that are not predominantly used for charitable,

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1 religious, scientific, or literary purposes are not exempt from taxation, and that an  
2 exemption for the portions of property used for charitable, religious, scientific, or literary  
3 purposes is not affected so long as the predominant use of such property is for charitable,  
4 religious, scientific, or literary purposes. The amendment applies to taxable years  
5 beginning on or after January 1, 2022, and does not provide a basis for an assessment  
6 of any tax not paid or create a right to a refund or credit of any tax paid before July 1,  
7 2021. See Chapter 2021-31, Sections 8 and 9, Laws of Florida, (HB 7061), effective July 1,  
8 2021 and applicable beginning January 1, 2022.  
9

### **Lands Used for Conservation Purposes**

12 Section 196.26, F.S., provides a new exemption for the 2010 tax year for “real property  
13 dedicated in perpetuity for conservation purposes”.

14 In order to qualify for this exemption, the parcel of land must:

- 17 \* Be subject to an easement which dedicates the land in perpetuity for conservation  
18 purposes; and
- 20 \* Be at least 40 acres in size or “fulfill a clearly delineated state conservation policy  
21 and yield a significant public benefit”.

22  
23 If the land is used exclusively for conservation purposes it is exempt from ad valorem  
24 taxation.

25  
26 If the land is used for allowed commercial purposes, the land receives an exemption  
27 equal to 50 percent of the land’s assessed value.

28  
29 **Note:** Legislation was enacted in 2016 to amend section 196.011(6)(b), F.S., to provide  
30 that once the property appraiser has granted an original application for this exemption,  
31 the property owner is not required to file a renewal application until the property’s use  
32 no longer complies with the restrictions and requirements of the conservation easement.  
33 See Chapter 2016-110, Laws of Florida (CS/SB 190).

### **Specific Educational Exemptions**

37 Charter school property receives an exemption in Section 196.1983, F.S.

38  
39 **Note:** Legislation enacted in 2017 amended section 196.1983, F.S., to clarify  
40 provisions requiring landlords to reduce lease payments made by charter schools so  
41 that the schools receive the full benefit derived by the landlord from the exemption,  
42 effective retroactively to January 1, 2017. See Chapter 2017-36, section 7, Laws of Florida  
43 (HB 7109).

44  
45 Gold Seal Quality Child Care Centers are exempt as educational institutions. Section  
46 402.26, F.S.

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1  
2 College sororities and fraternities can be exempt under section 196.198, F.S.

3  
4 Section 196.198, F.S., also specifically exempts sheltered workshops providing  
5 rehabilitation and retraining to disabled individuals.

6  
7 **Note:** Legislation enacted in 2013 amended Section 196.198, F.S, to include an  
8 additional form of ownership that qualifies for the educational property exemption.

9  
10 \* Property used exclusively for educational purposes is deemed owned by an  
11 educational institution and qualifies for the educational property exemption if the  
12 entity that owns 100 percent of the educational institution and the entity that owns  
13 the property are owned by the identical natural persons.

14  
15 **Note:** Legislation enacted in 2021 amended section 196.198, Florida Statutes,  
16 educational property exemption, to provide that land, buildings, and other improvements  
17 used exclusively for educational purposes shall be deemed owned by an educational  
18 institution if the educational institution that currently uses the land, buildings, and other  
19 improvements for educational purposes is an educational institution described under s.  
20 212.0602, F.S, and, under a lease, the educational institution is responsible for any  
21 taxes owed and for ongoing maintenance and operational expenses for the land,  
22 buildings, and other improvements. The owner of the property must disclose to the  
23 educational institution the full amount of the benefit derived from the exemption and the  
24 method for ensuring the educational institution receives the benefit so that the  
25 educational institution receives the full benefit of the exemption. Also, property owned  
26 by a house of public worship and used by an educational institution for educational  
27 purposes limited to students in preschool through grade 8 is exempt. The amendment  
28 relating to property owned by a house of public worship is remedial and clarifying in  
29 nature and applies to actions pending as of July 1, 2021. See Chapter 2021-31, Sections 11  
30 and 12, Laws of Florida, (HB 7061), effective July 1, 2021.

### 31 32 **Exemptions for Tangible Personal Property**

33 Beginning in 2008, the first \$25,000 of tangible personal property listed on each return  
34 is exempt. See section 196.183, F.S.

35  
36 \* See also Rule 12D-7.019, F.A.C.

37  
38 Household goods and personal effects are exempt. See section 196.181, F.S.

39  
40 Inventory is exempt. See section 196.185, F.S.

41  
42 **Note:** Legislation enacted in 2017 amended section 192.001(11)(c), F.S., to clarify that  
43 the term “inventory” includes specified construction and agricultural equipment weighing  
44 1,000 pounds or more that is returned to a dealership under a rent-to-purchase option  
45 and held for sale to customers in the ordinary course of business. This change was



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1 effective July 1, 2017, and applies to assessments and administrative reviews beginning  
2 in 2018. See Chapter 2017-36, Sections 2 and 59, Laws of Florida (HB 7109).

### 3 4 5 **Other Exemptions**

6 Labor organization property. See section 196.1985, F.S.

7  
8 Affordable housing. See section 196.1978, F.S.

9  
10 **Note:** Legislation enacted in 2021 amended section 196.1978(2), Florida Statutes,  
11 affordable housing property exemption, removing the ad valorem tax discount of 50  
12 percent and enacting an exemption of 100 percent on multifamily projects that provide  
13 housing to extremely-low-income, very-low-income, or low-income families. Such a  
14 multifamily project will receive the exemption beginning on January 1 of the year  
15 following the 15th year of such an agreement. See Chapter 2021-31, Section 10, Laws of  
16 Florida, (HB 7061), effective July 1, 2021.

17  
18 **Note:** The 2020 Legislature enacted two amendments to section 196.1978(1), F.S. in  
19 Chapter 2020-10, section 10, Laws of Florida, effective upon becoming a law April 8,  
20 2020 and operating retroactive to January 1, 2020; and Chapter 2020-10, section 11,  
21 Laws of Florida, effective January 1, 2021.

- 22 • Section 10 amended section 196.1978(1), F.S., to provide, for property used to  
23 provide affordable housing, additional criteria under which vacant units are  
24 treated as exempt portions of the affordable housing property. These criteria are:  
25 if a recorded land use restriction agreement requires all residential units within  
26 the property to be used in a manner that qualifies for the exemption under this  
27 subsection and if the vacant units are being offered for rent. effective upon  
28 becoming a law and will operate retroactively to January 1, 2020. See chapter  
29 2020-10, Section 10, Laws of Florida (CS/HB 7097).
- 30 • Section 11 amended section 196.1978(1), F.S., to provide legislative intent for  
31 property used to provide affordable housing, that if the sole member of a limited  
32 liability company that owns the property is also a limited liability company that is  
33 disregarded as an entity for federal income tax purposes, the property will be  
34 treated as owned by the sole member of the limited liability company that owns  
35 the limited liability company that owns the property. Also, units whose occupants'  
36 income no longer meet the income limits, but whose income met the income  
37 limits at the time they became tenants, shall be treated as exempt portions of the  
38 affordable housing property. This amendment is effective January 1, 2021. See  
39 Chapter 2020-10, Section 11, Laws of Florida (CS/HB 7097).

40  
41 **Note:** Legislation enacted in 2017 amended section 196.1978(2), F.S., to provide a 50  
42 percent discount on property taxes for specified portions of certain multifamily properties  
43 that offer affordable housing to specified low-income persons and families, if application  
44 is made by March 1. This amendment also specifies procedures for the application of  
45 the discount and provides conditions for the termination of the discount. The

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1 amendment is effective starting in 2018. See Chapter 2017-36, Section 6, Laws of Florida  
2 (HB 7109).

3  
4 Community centers. See section 196.1986, F.S.

5  
6 Historic properties. See section 196.1997, F.S.

7  
8 Historic properties open to the public. See section 196.1998, F.S.

9  
10 Not for profit sewer and water companies. See section 196.2001, F.S.

11  
12 Section 501(c)(12), I.R.C., not-for-profit water and wastewater systems. See section  
13 196.2002, F.S.

14  
15 Historic property used for certain commercial or nonprofit purposes. See section 196.1961,  
16 F.S.

17  
18 New and expanding businesses. See section 196.1995, F.S.

19  
20 Renewable energy source devices. See section 196.182, F.S.

21  
22 **Note:** Legislation enacted in 2017 created section 196.182, F.S., to provide an  
23 exemption, from the tangible personal property tax, of 80 percent of the assessed value  
24 of certain renewable energy source devices, if the device, as defined in s. 193.624, is  
25 considered tangible personal property and:

26 (a) Is installed on real property on or after January 1, 2018;

27 (b) Was installed before January 1, 2018, to supply a municipal electric utility located  
28 within a consolidated government; or

29 (c) Was installed after August 30, 2016, on municipal land as part of a described  
30 project supplying a municipal electric utility for certain purposes.

31  
32 This legislation also specifies conditions under which the exemption would not apply,  
33 and specifies conditions under which the exemption would apply to devices affixed to  
34 property owned or leased by the U.S. Department of Defense. This change is effective  
35 July 1, 2017, and applies to assessments and administrative reviews beginning in 2018.  
36 See Chapter 2017-118, Sections 3 and 8, Laws of Florida (CS/SB 90).

37  
38 **Note:** Legislation enacted in 2014 amended section 196.1995, F.S., to provide that, in  
39 order to qualify for the economic development exemption, the improvements to real  
40 property must be made or the tangible personal property must be added or increased  
41 after approval by motion or resolution of the local governing body, subject to ordinance  
42 adoption, or on or after the day the ordinance is adopted.

43  
44 \* This legislation was effective May 12, 2014, and applies to assessments and  
45 administrative reviews beginning in 2015. See Chapter 2014-40, Section 1, Laws of  
46 Florida (HB 7081).

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1  
2 **Note:** Legislation enacted in 2016 amended sections 196.012 and 196.1995, F.S, to  
3 provide:

- 4
- 5 • Language to describe the new businesses and expansions of existing businesses  
6 that are eligible to receive the economic development property tax exemption. It  
7 states that the new businesses and expansions of existing businesses that are in  
8 areas that were designated as enterprise zones under Ch. 290, F.S., as of  
9 December 30, 2015, but not in a brownfield area, may qualify for the property tax  
10 exemption only if the local governing body approves by motion or resolution, subject  
11 to ordinance adoption, or by ordinance enacted before December 31, 2015.  
12
  - 13 • All data center equipment for a data center will be exempt from property taxation for  
14 the term of the approved exemption.  
15
  - 16 • Any exemption granted under this section will remain in effect for up to 10 years with  
17 respect to any particular facility, or up to 20 years for a data center, regardless of  
18 any change in the authority of the county or municipality to grant these exemptions  
19 or the expiration of the Enterprise Zone Act under Ch. 290, F.S.  
20
  - 21 • This law's amendments to ss. 196.012 and 196.1995, F.S., which relate to the  
22 property tax exemption for certain enterprise zone businesses, are remedial in  
23 nature and apply retroactively to December 31, 2015.  
24

25 See Chapter 2016-220, Sections 2, 3, and 4, Laws of Florida (HB 7099).

26  
27 Space laboratories and carriers. See section 196.1999, F.S.

28  
29 Biblical history display. See section 196.1987, F.S.

30  
31 **Note:** Hospitals. Legislation enacted in 2021 repealed section 193.019, F.S., relating to  
32 the exemption for hospitals and community benefit reporting. See Chapter 2021-31,  
33 Section 1, Laws of Florida, (HB 7061), effective May 21, 2021. Legislation enacted in 2020  
34 had created section 193.019, F.S., effective January 1, 2022, relating to the exemption  
35 for hospitals, and providing for community benefit reporting. The legislation provides a  
36 limitation for each exemption by multiplying it by the ratio of the net community benefit  
37 expense to the tax reduction resulting from the exemption, if the net community benefit  
38 expense attributed to an applicant's property in a county equals or exceeds the tax  
39 reduction resulting from the exemption for that county. This note is provided for  
40 information only as the law will be effective for 2022. See Chapter 2020-10, Section 2, Laws  
41 of Florida (CS/HB 7097) effective January 1, 2022.  
42

43 Hospitals, nursing homes, and homes for special services. See section 196.197, F.S.

44  
45 **Note:** Legislation enacted in 2017 amended section 196.012(9), F.S., to include in the  
46 terms "nursing home" or "home for special services," institutions that possess a valid

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1 license under Chapter 429, Part I, F.S., and to make this amendment applicable to the  
2 2017 property tax roll. This change was effective May 25, 2017 and applies to  
3 assessments and administrative reviews beginning in 2017. See Chapter 2017-36, Sections  
4 3 and 4, Laws of Florida (HB 7109).

5  
6 Nonprofit homes for the aged. See section 196.1975, F.S.

7  
8 **Note:** Legislation enacted in 2017 amended section 196.1975(4)(c), F.S., to provide  
9 that a not-for-profit corporation applying for an exemption for units or apartments under  
10 paragraph (4)(a) of the statute must file, with the application, an affidavit from each  
11 person who occupies a unit stating the person's income; the corporation is not required  
12 to provide an affidavit from a resident who is a totally and permanently disabled veteran  
13 who meets the requirements of s. 196.081, F.S. The amendment also provides that, if  
14 the property appraiser determines that additional documentation proving an affiant's  
15 income is necessary, the property appraiser may request it. This change was effective  
16 July 1, 2017, and applies to assessments and administrative reviews beginning in 2018.  
17 See Chapter 2017-36, Sections 5 and 59, Laws of Florida (HB 7109).

18  
19 Proprietary continuing care facilities. See section 196.1977, F.S.

20  
21 Licensed child care facilities located in an enterprise zone. See section 196.095, F.S.

### 22 23 24 **PART 3: Administrative Reviews of Denials of Property Classifications**

25  
26 The Florida Constitution provides for certain "classifications" of property for assessment  
27 purposes.

28  
29 "Property Classification" or "Classification" means a classification of property for  
30 assessment purposes according to applicable statutory criteria, including those in  
31 Chapter 193, Part II, F.S., and an assessment of the property at its classified use value.

32  
33 "Classified use value" means the value of a property that is based solely on the  
34 property's character or use and based on the applicable statutory criteria, without regard  
35 to the property's highest and best use. See section 192.001(2), F.S.

36  
37 The sections below contain information on the administrative review of denials of  
38 classifications, including information on the statutory criteria for classifications.

### 39 40 41 **The Administrative Review Process for Denials of Classifications**

42 Set forth below is a sequence of general procedural steps for Boards and special  
43 magistrates to follow in administrative reviews of denials of classifications in order to  
44 fulfill the procedural requirements of section 194.301, F.S., and Rule 12D-9.027(4),  
45 F.A.C.

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1 This sequence of steps applies to: the consideration of evidence, the development of  
2 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

3  
4 *“The board or special magistrate shall not be required to make, at any time during a  
5 hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See  
6 Rule 12D-9.025(9), F.A.C.

7  
8 *“The board or special magistrate has the discretion to determine whether to make such  
9 determinations during a hearing or to consider the petition and evidence further after the  
10 hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.

11  
12 Under Rule 12D-9.027(4), F.A.C., in administrative reviews of denials of classifications,  
13 the Board or special magistrate shall follow this sequence of general procedural steps:

- 14 1. Consider the admitted evidence presented by the parties;
- 15 2. Identify the particular property classification issue that is the subject of the petition;
- 16 3. Identify the statutory criteria that apply to the property classification that was  
17 identified as the issue under administrative review;
- 18 4. Identify and consider the essential characteristics of the petitioned property or the  
19 property owner, as applicable, based on the statutory criteria that apply to the issue  
20 under administrative review;
- 21 5. Identify and consider the basis used by the property appraiser in issuing the denial  
22 of property classification for the petitioned property; and  
23 6. Determine whether the admitted evidence proves by a preponderance of the  
24 evidence that the property appraiser’s denial is incorrect and the property  
25 classification should be granted because all of the applicable statutory criteria are  
26 satisfied.

27  
28  
29 The Board or special magistrate must decide whether the admitted evidence, regardless  
30 of which party presented the evidence, has sufficient weight (in relevance and  
31 credibility) to legally justify overturning the property appraiser’s original determination  
32 and granting the property classification.

33  
34 If the admitted evidence proves the petitioner’s case by the greater weight of the  
35 evidence, the original determination must be overturned and the petition granted.

36  
37 If the admitted evidence does not legally justify overturning the property appraiser’s  
38 original determination, the determination must be upheld.

### 39 **Statutory Criteria for Property Classifications**

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1 The following sections of this module contain information on the statutory criteria that  
2 must be met to qualify for the property classifications available in Florida.

3  
4 \* In the case of the more common classifications, this training presents more detail on  
5 the applicable statutory criteria.

6  
7 \* Information on less common classifications not specifically addressed in this training  
8 can be found in Chapter 193, Part 2, F.S.

### 9 10 11 **Statutory Criteria for Different Types of Property Classifications**

12 Statutory criteria for the following types of property classifications are presented below.

#### 13 14 Types of Property Classifications

- 15 • Agricultural Property
- 16 • Pollution Control Devices
- 17 • Noncommercial Recreational and Conservation Lands
- 18 • Historic Property
- 19 • High-water Recharge Property
- 20 • Working Waterfront Property
- 21 • Renewable Energy Source Device

#### 22 23 24 **Agricultural Property**

25 Authorized in Article VII, Section 4(a), of the Florida Constitution.

26  
27 The agricultural classification is governed by sections 193.451, 193.461, 193.4615, and  
28 193.462, F.S.

29  
30 The property owner must apply for classification as agricultural property by March 1.  
31 However, section 193.462, Florida Statutes, allows the Board to grant the classification  
32 even when an application was not made by the statutory deadline.

33  
34 Qualifying property must be used for “bona fide agricultural purposes,” meaning good  
35 faith commercial usage. In determining bona fide agricultural use, the property appraiser  
36 may consider the following factors: See section 193.461(3)(b)1., F.S.

- 37
- 38 a. The length of time the land has been utilized for bona fide agricultural purposes;
- 39
- 40 b. Whether the use has been continuous;
- 41
- 42 c. The purchase price paid;
- 43
- 44 d. Size, as it relates to specific agricultural use, but a minimum acreage may not be
- 45 required for agricultural assessment;
- 46

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- 1 e. Whether an indicated effort has been made to care sufficiently and adequately for  
2 the land in accordance with accepted commercial agricultural practices, including,  
3 without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted  
4 agricultural practices;  
5  
6 f. Whether the land is under lease and, if so, the effective length, terms, and conditions  
7 of the lease; and  
8  
9 g. Such other factors as may become applicable.

10  
11 “Agricultural Purposes” include but are not limited to: See section 193.461(5), F.S.

- 12  
13 \* Horticulture  
14 \* Floriculture  
15 \* Viticulture  
16 \* Forestry  
17 \* Dairy  
18 \* Livestock  
19 \* Poultry  
20 \* Bees  
21 \* Pisciculture (when the land is used primarily for the production of tropical fish)  
22 \* Aquaculture  
23 \* Sod Farming  
24 \* All forms of farm products as defined in section 823.14(3), F.S., and farm  
25 production  
26

27 Under section 193.461(3)(e), F.S., land that has received an agricultural classification  
28 from the value adjustment board or a court of competent jurisdiction is entitled to  
29 receive such classification in any subsequent year until: such agricultural use of the land  
30 is abandoned or discontinued; the land is diverted to a nonagricultural use; or the land is  
31 reclassified as nonagricultural pursuant to section 193.461(4), F.S.  
32

33 \* In Tilton v. Gardner, 52 So.3d 771 (Fla. 5th DCA 2010), the court, in reviewing a  
34 denial of an agricultural classification that had been granted by the value adjustment  
35 board in a prior assessment year under subsection 193.461(3)(e), F.S., applied the  
36 physical activity test in determining whether record evidence was sufficient to justify  
37 continuing the agricultural classification.  
38

- 39 \* The Florida Supreme Court has held that the key to determining whether an  
40 agricultural classification should be granted is the actual physical activity on the  
41 land. See Schultz v. Love PGI Partners, LP, 731 So.2d 1270, 1271 (Fla. 1999).  
42 Also, see Straughn v. Tuck, 354 So.2d 368, 370 (Fla. 1977).  
43  
44

### **Agricultural Property: Dispersed Water Storage Programs**

45

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1 \* Legislation enacted in 2014 amended Section 193.461, F.S., to provide that  
2 agricultural lands that participate in a dispersed water storage program under a  
3 contract with the Department of Environmental Protection or a water management  
4 district, which requires flooding of land, will retain the agricultural classification as  
5 long as the lands are included in the program or successor programs.

6  
7 \* The property appraiser will assess these lands as nonproductive agricultural lands.

8  
9 \* Lands that participate and are diverted from an agricultural use to a nonagricultural  
10 use shall be assessed under Section 193.011, F.S.

### 11 12 13 **Agricultural Property: Quarantine and Eradication Programs**

14 Agricultural land taken out of production due to a state or federal quarantine or  
15 eradication program shall continue to be classified as agricultural property for the  
16 duration of such program or successor program. See Section 193.461(7), F.S.

17  
18 \* If the land in the program lies fallow or is used for non-income producing purposes,  
19 the land shall have a de minimus value of no more than \$50 per acre.

20  
21 \* If the land in the program is used for another permissible agricultural use, the land  
22 shall be assessed based on that usage.

23  
24 \* If the land is converted to a nonagricultural use, it will be assessed as  
25 nonagricultural property under section 193.011, F.S.

26  
27 **Note:** Legislation enacted in 2016 amended section 193.461(7)(a), F.S., to provide that  
28 lands classified for assessment purposes as agricultural lands that a state or federal  
29 eradication or quarantine program takes out of production will remain agricultural lands  
30 for the remainder of the program. Lands that these programs convert to nonincome-  
31 producing uses will continue to be assessed at a minimum value of up to \$50 per acre  
32 on a single-year assessment methodology.

33  
34 This legislation identified the Citrus Health Response Program as a state or federal  
35 eradication or quarantine program, and allows land to retain its agricultural classification  
36 for five years after the date of execution of a compliance agreement between the  
37 landowner and the Department of Agriculture and Consumer Services (DACCS) or a  
38 federal agency, as applicable, for this program or successor programs.

39  
40 Lands under these programs that are converted to fallow or otherwise nonincome-  
41 producing uses are still agricultural lands assessed at a minimal value of up to \$50 per  
42 acre on a single-year assessment methodology while fallow or used for nonincome-  
43 producing purposes. Lands under these programs that are replanted in citrus according  
44 to the requirements of the compliance agreement are classified as agricultural lands  
45 and are assessed at a minimal value of up to \$50 per acre, on a single-year  
46 assessment methodology, during the five-year term of agreement.



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1  
2 See Chapter 2016-88, Sections 1 and 5, Laws of Florida (CS/CS/HB 749).

3  
4 **Note:** Legislation enacted in 2018 created section 193.461(7)(c), F.S., to require  
5 agricultural lands that incur damage from a natural disaster, for which the Governor  
6 declares a state of emergency and results in halting agricultural production, to be  
7 classified as agricultural lands for five years following termination of the emergency  
8 declaration. However, if the lands are diverted from agricultural use to nonagricultural  
9 use during or after the five-year recovery period, the property appraiser must assess the  
10 lands at just value under s. 193.011, F.S. This provision applies retroactively to natural  
11 disasters that occurred on or after July 1, 2017. See Chapter 2018-84, Section 1, Laws of  
12 Florida (CS/CS/SB 740).

13  
14 **Note:** Legislation enacted in 2018 created section 193.461(8), F.S., to provide that  
15 lands classified as agricultural, which are not being used for agricultural production due  
16 to a hurricane that made landfall in this state during 2017, must continue to be classified  
17 as agricultural through December 31, 2022, unless the lands are converted to a  
18 nonagricultural use. Lands converted to nonagricultural use are not covered by this  
19 subsection and must be assessed as otherwise provided by law. This amendment  
20 applies to the 2018 tax roll. See Chapter 2018-118, Sections 12 and 13, Laws of Florida  
21 (CS/HB 7087).

### 22 23 24 **Agricultural Property: Special Types**

25 See Sections 193.451 and 193.4615, F.S.

26 In addition to the classified use assessments of agricultural land discussed previously,  
27 there are additional provisions which address specific kinds of agricultural property.

28  
29 These provisions usually deal with the assessment of tangible personal property and  
30 instruct that said property should either have no value placed upon it or that it should be  
31 valued as salvage.

32  
33 Items with no value:

- 34 \* Growing annual crops
- 35 \* Nonbearing fruit trees
- 36 \* Raw agricultural products (until offered for sale)

37  
38 Items valued as salvage:

- 39 \* Citrus grading and classification equipment leased from the Department of  
40 Agriculture
- 41 \* Obsolete agricultural equipment

### 42 43 44 **Pollution Control Devices**

45 This classification is governed by Section 193.621, F.S., which:  
46

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1 \* States that pollution control devices installed in manufacturing or industrial plants or  
2 installations shall be valued as salvage.

3  
4 \* Provides that demolition and reconstruction of part of such a facility for the purpose  
5 of reducing pollution, and which does not substantially increase the productivity of  
6 the facility, shall not increase the facility's assessed value.

7  
8 \* Allows the property appraiser to seek a recommendation from the Department of  
9 Environmental Protection as to what constitutes pollution control.

10  
11 \* Allows the Department of Environmental Protection to promulgate rules concerning  
12 this exemption.

### 13 14 15 **Noncommercial Recreation and Conservation Lands**

16 This classification is governed by Section 193.501, F.S.

17  
18 To receive this classification, property must be subject to a conservation easement,  
19 qualified as environmentally endangered land, designated as conservation land, or used  
20 for outdoor recreational or park purposes.

21  
22 In addition, the owner must convey all rights to develop the property to a public entity or  
23 enter into a covenant with a public entity, for a period no less than ten years, providing  
24 that the property shall be subject to one or more of the conservation restrictions  
25 provided in Section 704.06(1), F.S. and shall not be used by the owner except for  
26 outdoor recreational purposes.

27  
28 If the covenant or conveyance extends for more than ten years, the property shall be  
29 valued considering no factors other than those relative to its value for the present use  
30 as restricted by the covenant or conveyance.

31  
32 If the covenant has less than ten years left, the property will be valued at just value  
33 considering the restrictions imposed by the covenant.

34  
35 If the owner seeks to end the covenant before its expiration, he or she will be liable for  
36 all deferred tax liability plus interest.

### 37 38 39 **Historic Property**

40 There are two separate sections of the Florida Statutes which enact two separate  
41 programs for historic properties.

42  
43 \* Section 193.503, F.S., applies to historic properties used for commercial or certain  
44 nonprofit purposes.

45  
46 \* Section 193.505, F.S., deals with other historically significant property.

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**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;
- \* The property must be: listed in the National Register of Historic Places, part of a National Register Historic District, or designated as historic or part of a historic district under a local preservation ordinance;
- \* The property must be maintained in good condition to preserve historic value; and
- \* The property must be open to the public 40 hours per week for 45 weeks per year or for 1800 hours annually.

The classification is lost if the owner fails to continue to meet these criteria.

**Historic Property: Section 193.505, F.S.**

The criteria for qualifying for this classification are as follows:

- \* The property must be: on the National Register of Historic places, in a certified locally designated historic district, or found to be historic by the Division of Historical Resources or a local historic preservation board;
- \* The owner must convey all rights to develop the property to the county governing board or enter into a covenant for a period of no less than ten years providing that the property shall not be used for any purpose inconsistent with historic preservation or the historic qualities of the property;
- \* The county must agree to accept the development right or covenant and must designate the property as historic by formal resolution;
- \* The county may not transfer development rights or use them in a manner inconsistent with historic preservation or the historic qualities of the property;
- \* If the owner seeks to end the covenant before its expiration, he or she will be liable for all deferred tax liability plus interest; and

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- 1 \* When the covenant ends, the owner is responsible for all deferred tax liability plus  
2 interest.  
3  
4

### 5 **High-water Recharge Property**

6 The county or city must adopt an ordinance allowing for this classification. See Section  
7 193.625, F.S.  
8

- 9 \* The ordinance shall provide the formula for assessing property which qualifies for  
10 this classification.  
11  
12 \* Land must be used for “bona fide high-water recharge purposes.”  
13  
14 \* Application for this classification must be made by March 1.  
15  
16 \* The land owner must contract to use the land for high-water recharge purposes for  
17 five years or more.  
18

19 To qualify as being used for “bona fide high-water recharge purposes”: See Subsection  
20 193.625(3)(b), F.S.  
21

- 22 \* The land use must have been continuous.  
23  
24 \* The land use must be vacant residential, vacant commercial, vacant industrial,  
25 vacant institutional, nonagricultural, or single-family residential.  
26  
27 \* The maintenance of one single-family residential dwelling on part of the land does  
28 not in itself preclude a high-water recharge classification.  
29  
30 \* The land must be located within a prime groundwater recharge area or in an area  
31 considered by the appropriate water management district to supply significant  
32 groundwater recharge.  
33  
34 \* Significant groundwater recharge shall be assessed by the appropriate water  
35 management district on the basis of hydrologic characteristics of the soils and  
36 underlying geologic formations.  
37  
38 \* The land must not be receiving any other special classification.  
39  
40 \* There must not be in the vicinity of the land any activity that has the potential to  
41 contaminate the ground water, including, but not limited to, the presence of:  
42  
43 \* Toxic or hazardous substances;  
44 \* Free-flowing saline artesian wells;  
45 \* Drainage wells;  
46 \* Underground storage tanks; or

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1           \* Any potential pollution source existing on a property that drains to the  
2           property seeking the high-water recharge classification.

3  
4           \* The parcel of land must be at least ten acres.  
5  
6

### 7 **Working Waterfront Property**

8 The Florida Constitution sets forth criteria for classifying and valuing working waterfront  
9 property.

10  
11 The provisions of Amendment 6, working waterfronts, have been placed in the Florida  
12 Constitution at Article VII, Section (4)(j), effective for the 2010 assessment year.  
13

14 These provisions state as follows:  
15

16           *“(j)(1) The assessment of the following working waterfront properties shall*  
17           *be based upon the current use of the property:*

18  
19           *a. Land used predominantly for commercial fishing purposes.*

20  
21           *b. Land that is accessible to the public and used for vessel launches*  
22           *into waters that are navigable.*

23  
24           *c. Marinas and drystackes that are open to the public.*

25  
26           *d. Water-dependent marine manufacturing facilities, commercial*  
27           *fishing facilities, and marine vessel construction and repair*  
28           *facilities and their support activities.*

29  
30           *(2) The assessment benefit provided by this subsection is subject to*  
31           *conditions and limitations and reasonable definitions as specified by*  
32           *the legislature by general law.”*  
33

34 The constitutional amendment on working waterfronts is self-executing with  
35 authorization for the Legislature to elaborate by general law.  
36

37 In the 2009 and 2010 sessions, the Legislature considered bills that did not pass but  
38 that would have contained guidance for classifying and valuing working waterfront  
39 property. These bills would have applied to the 2010 tax year if they had become law.  
40

41 Amendment 6, creating classification of property used for working waterfronts, is  
42 effective for the 2010 year in the absence of legislation.  
43  
44

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### 1 **Renewable Energy Source Device Classification**

- 2 \* Legislation enacted in 2013 created section 193.624, F.S., to provide for  
3 assessment of a "renewable energy source device" installed on or after January 1,  
4 2013, to new and existing residential real property.  
5  
6 \* When determining the assessed value of real property used for residential purposes,  
7 an increase in the just value of the property attributable to the installation of a  
8 renewable energy source device may not be considered.  
9  
10 \* This requirement is an exception to certain provisions relating to assessment of  
11 changes, additions, or improvements in sections 193.155 and 193.1554, F.S.  
12  
13 \* This legislation became effective July 1, 2013 and applies to assessments and  
14 administrative reviews beginning in 2014. See Chapter 2013-77, Sections 1, 2, and 3,  
15 Laws of Florida (HB 277).  
16

17 **Note:** Legislation enacted in 2017 amended section 193.624, F.S., to provide, for  
18 nonresidential real property, that 80 percent of the just value attributable to a renewable  
19 energy source device may not be considered in determining the assessed value of the  
20 property; this provision applies to devices installed on nonresidential property on or after  
21 January 1, 2018, except in a fiscally constrained county for which application for  
22 comprehensive plan amendment or planned unit development zoning is made by  
23 December 31, 2017. This change became effective July 1, 2017, and applies to  
24 assessments and administrative reviews beginning in 2018. See Chapter 2017-118,  
25 Sections 2 and 8, Laws of Florida (CS/SB 90).  
26  
27

### 28 **Agricultural Equipment Unusable for at Least 60 Days Due to** 29 **Hurricane Michael**

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

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1 ~~effective July 1, 2019 and applies retroactively to January 1, 2019. See Chapter 2019-42,~~  
2 ~~Section 2, Laws of Florida (HB 7123).~~

### 3 4 **PART 4: Administrative Reviews of Determinations of Changes of** 5 **Ownership or Control or Qualifying Improvement**

#### 6 **Assessment Increase Limitation for Homestead Real Property**

7  
8 Homestead real property shall be assessed at just value on the January 1 following a  
9 change of ownership. See Section 193.155, F.S.

10  
11 Under Section 193.155(3)(a), F.S., a change of ownership means any sale, foreclosure,  
12 or transfer of legal title or beneficial title in equity to any person, except:

13  
14 1. If after transfer, the same person is entitled to the homestead exemption as was  
15 previously entitled and the transfer:

16  
17 a. Is to correct an error; or

18  
19 b. Is between legal and equitable title; or

20  
21 c. Is by an instrument in which the owner is both grantor and grantee of the real  
22 property and one or more other individuals are additionally named as grantee.  
23 However, a change of ownership occurs if such individual applies for a homestead  
24 exemption on the property; or

25  
26 **Note:** Legislation enacted in 2021 added subparagraph d:

27 d. Is by means of an instrument in which the owner entitled to the homestead  
28 exemption is listed as both grantor and grantee of the real property and one or  
29 more other individuals, all of whom held title as joint tenants with rights of  
30 survivorship with the owner, are named only as grantors and are removed from  
31 the title; or

32 See Chapter 2021-31, Section 2, Laws of Florida, (HB 7061), effective July 1, 2021.

33  
34 **Note:** Legislation enacted in 2013 added what is now subparagraph e:

35 e. if the transfer is to a person who is entitled to the homestead exemption both  
36 before and after the transfer and the person is a lessee entitled to the  
37 homestead exemption under section 196.041(1), F.S.

38 See Chapter 2013-72, Section 4, Laws of Florida (SB 1830).

39  
40 2. If the transfer is between husband and wife including a change or transfer to a  
41 surviving spouse or a transfer due to a dissolution of marriage; or

42  
43 3. If the transfer occurs by operation of law under Section 732.401, F.S.; or  
44

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1 4. If on the death of the owner, the transfer is between the owner and another who  
2 is a permanent resident and is legally or naturally dependent upon the owner; or  
3

4 **Note:** Legislation enacted in 2021 added subparagraph 5.:

5 5. The transfer occurs with respect to a property where all of the following apply:  
6 a. Multiple owners hold title as joint tenants with rights of survivorship;  
7 b. One or more owners were entitled to and received the homestead exemption  
8 on the property;  
9 c. The death of one or more owners occurs; and  
10 d. Subsequent to the transfer, the surviving owner or owners previously entitled to  
11 and receiving the homestead exemption continue to be entitled to and receive  
12 the homestead exemption.

13 See Chapter 2021-31, Section 2, Laws of Florida, (HB 7061), effective July 1, 2021.  
14

### Assessment Increase Limitation for Non-Homestead Real Property

15  
16  
17 The types of property eligible for the 10 percent cap are provided under Section  
18 193.1554, F.S., and Section 193.1555, F.S.

19  
20 Section 193.1554, F.S., relates to the assessment of non-homesteaded residential  
21 property that contains nine or fewer dwelling units that does not receive a homestead  
22 exemption under Section 196.031, F.S., including vacant property zoned and platted for  
23 residential use.

24  
25 Section 193.1555, F.S., relates to residential property with 10 or more units and to non-  
26 residential real property.

27  
28 “Non-residential real property” means real property that is not subject to the assessment  
29 limitations set forth in subsection 4(a), (b), (c), (d), or (g), Article VII of the Florida  
30 Constitution. This involves property classified agricultural, high-water recharge, non-  
31 commercial recreational, conservation, and homestead limited increase property.  
32

33 When ownership or control of the property changes, the property is subject to  
34 reassessment at just value.

35  
36 Also, when a qualifying improvement is made on a non-homestead property that has 10  
37 or more dwelling units, or is non-residential property, under Section 193.1555(5), F.S.,  
38 the property is required to be assessed at just value as of January 1 of the year following  
39 the qualifying improvement.  
40

41 A qualifying improvement means any substantially completed improvement that increases  
42 the just value of the property by at least 25 percent. See section 193.1555(5)(a), F.S.

43  
44 “Improvement” means an addition or change to land or buildings which increases their value  
45 and is more than a repair or a replacement. See section 193.1555(1)(b), F.S.



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A person or entity that owns non-homestead property subject to receiving the 10 percent assessment increase limitation under Sections 193.1554 or 193.1555, F.S., must notify the property appraiser of the county where the property is located of any change of ownership or control as defined in Sections 193.1554(5) and 193.1555(5), F.S. See section 193.1556, F.S.

Rule 12D-8.00659, F.A.C., (Notice of Change of Ownership or Control of Non-Homestead Property) contains detailed provisions explaining the change in ownership and control. Forms are included for the owner to notify the property appraiser as provided in sections 193.1554 and 193.1555, F.S.

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 34 **Petitions on Determinations Made in the New Homestead County**

35 A portability petition must always be filed in the county where the new homestead  
36 property is located.

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.

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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.

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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.  
47

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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. 4<sup>th</sup> 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

## 2021 Value Adjustment Board Training - Module 11

### 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.