

# **2018 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)** [2018 Changes to Statutory Law](#)
- 2017 Changes to Statutory Law
- 2016 Changes to Statutory Law
- 2015 Changes to Statutory Law
- 2014 Changes to Statutory Law
- Statutory Law Effective Beginning With 2009 Assessments
- Administrative Rules and Forms, Effective March 30, 2010
- 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

### **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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7. The review, admissibility, and consideration of evidence;
8. Requirements for written decisions; and
9. The Department's standard measures of value, including the guidelines for real and tangible personal property.

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

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

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

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

- \* The training materials and bulletins are aid and assistance as described in section 195.002(1), F.S.
  - \* Board attorneys should not consider the training materials or bulletins as controlling when providing legal advice, but may consider them as persuasive.
  - \* Boards and special magistrates should not consider the training materials or bulletins as controlling for findings of fact, conclusions of law, or reasons for upholding or overturning determinations of the property appraiser or tax collector, but may consider the training materials and bulletins as persuasive.
  - \* The training materials and bulletins are separate and distinct from the Uniform Policies and Procedures Manual required by section 194.011(5)(b), F.S., the contents of which manual do have the force and effect of law.
  - \* To avoid confusion between the training materials required by section 194.035(3), F.S., and the Uniform Policies and Procedures Manual required by section 194.011(5)(b), F.S., these training materials should not be referred to as a "manual."
- The training contains information about the law of which Boards, Board attorneys, and special magistrates should be aware.
- \* The training also contains the Department's observations, explanations, examples, and recommendations intended to assist Boards, Board attorneys, and special magistrates in performing their duties consistent with law.

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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.

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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.

### **Numbers and Titles of Modules in This Training**

41  
42 The Department's 2018 training for Boards and special magistrates is organized into 11  
43 training modules, as listed and described below:

## 2018 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.

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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.”

### **Intended Audience for This Training**

36  
37  
38 Under Subsections 194.035(1) and (3), F.S., the intended audience for this training is:

- 39  
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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**Note:** All special magistrates are required to take this training, but not all are required to complete the training examination.

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

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

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

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

### **Persons Required to Take This Training But Not Complete the Exam**

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

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

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

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

### **Persons Required to Complete This Training and Complete the Exam**

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

Before being appointed, the special magistrates required to complete the exam must 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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- \* However, there is no requirement to have an informal conference before a taxpayer files a petition with the Board or files a lawsuit in circuit court.

### 3. Petition to the Value Adjustment Board

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

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

### 4. Lawsuit in Circuit Court

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

- \* A taxpayer is not required to file a petition with the Board before filing a lawsuit.

## **Taxpayer Rights**

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

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

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

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

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

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### **The Four Sources of Florida Law**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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### **(NEW) 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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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).

### **2017 Changes to Statutory Law**

In 2017, several changes to statutory law were enacted. Except where other dates are noted, these changes affected administrative reviews of assessments beginning in 2017. These changes 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 2017:

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

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

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

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

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

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

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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 2016:

- Amended section 192.0105(2)(f), F.S., to provide that a taxpayer has the right, in value adjustment board proceedings, to be represented by a person specified in sections 194.034(1)(a), (b), or (c), F.S. See Chapter 2016-128, Section 1, Laws of Florida (CS/CS/HB 499).
- Amended section 193.073(1)(a), F.S., to provide that the property appraiser shall mail a notice informing the taxpayer that an erroneous or incomplete statement of personal property has been filed. Such notice shall be mailed at any time before the mailing of the notice required in s. 200.069. The taxpayer has 30 days after the date the notice is mailed to provide the property appraiser with a complete return listing all property for taxation. See Chapter 2016-128, Section 2, Laws of Florida (CS/CS/HB 499).
- Amended section 193.122, F.S., to provide that apart from an extension of the roll under s. 197.323, F.S., the value adjustment board must complete all hearings that s. 194.032, F.S., requires and certify the assessment roll to the property appraiser by June 1 following the assessment year. The June 1 requirement can extend until December 1 in each year in which the number of filed petitions increases by more than 10 percent over the previous year. The provisions of this law first apply to the 2018 tax roll. See Chapter 2016-128, Sections 3 and 4, Laws of Florida (CS/CS/HB 499).
- Amended sections 193.155(10), 193.1554(10), and 193.1555(10), F.S., to provide that before the property appraiser may file a tax lien on property not entitled to receive the property assessment limitations in these sections, the owner must have 30 days to pay the taxes and any applicable penalties and interest. If the property appraiser improperly grants the property assessment limitation because of a clerical mistake or the property appraiser's omission, the person or entity improperly receiving the property assessment limitation may not be assessed penalties or interest. See Chapter 2016-128, Sections 5, 6, and 7, Laws of Florida (CS/CS/HB 499).
- Amended section 194.011, F.S., to provide that the taxpayer must sign a petition to the value adjustment board or the taxpayer's written authorization or power of attorney must accompany the petition at the time of filing unless the person filing the petition is listed in s. 194.034(1)(a), F.S. A person listed in s. 194.034(1)(a), F.S., may file a petition with a value adjustment board without the taxpayer's signature or written authorization by certifying under penalty of perjury that he or she has authorization to file the petition on the taxpayer's behalf. If a taxpayer notifies the value adjustment board that someone has filed a petition for the taxpayer's property without his or her consent, the value adjustment board may require the person filing 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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- Amended section 194.034, F.S., to provide that the taxpayer's employee or an employee of an affiliated entity, an attorney who is a member of The Florida Bar, a real estate appraiser licensed under Ch. 475, F.S., a real estate broker licensed under Ch. 475, F.S., or a certified public accountant licensed under Ch. 473, F.S., whom the taxpayer retains may represent the petitioner. This person may present testimony and other evidence.

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

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

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

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

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

- Amended section 194.035, F.S., to allow an attorney special magistrate to hear issues of the determination that a change of ownership, change of ownership or control, or a qualifying improvement has occurred. Also, when appointing special magistrates or scheduling special magistrates for specific hearings, the board, board attorney, and board clerk may not consider the dollar amount or percentage of any 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).

### **2015 Changes to Statutory Law**

In 2015, several changes to statutory law were enacted. These changes affected administrative reviews beginning in 2015. These changes 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 2015:

- Amended section 194.011(3)(a), F.S., to provide that the value adjustment board clerk must have available and distribute Department of Revenue forms for filing petitions to the value adjustment board. See Chapter 2015-115, Section 1, Laws of Florida (CS for HB 489).
- Added section 194.011(3)(g), F.S., to provide that an owner of multiple tangible personal property accounts may file with the value adjustment board a single joint petition if the property appraiser determines that the tangible personal property accounts are substantially similar in nature. See Chapter 2015-115, Section 1, Laws of Florida (CS for HB 489).
- Amended section 194.011(4)(b), F.S., to provide that the property appraiser's evidence list must contain the property record card when the property appraiser fulfills the exchange of evidence requirements under section 194.011(4), F.S. This

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act also removed any role of the board clerk in providing the property record card under this statute. See Chapter 2015-115, Section 1, Laws of Florida (CS for HB 489).

- Added section 193.0235(2)(d), F.S., to provide an additional specific property type that qualifies as a subdivision “common element.” This specific property type consists of property located within the same county as the subdivision and used for at least 10 years for the exclusive benefit of owners of lots within the subdivision. See Chapter 2015-221, Section 1, Laws of Florida (HB No. 33-A).
- Added section 196.199(1)(a)2., F.S., to provide an ad valorem tax exemption for a leasehold interest in and improvements affixed to land owned by the United States, any branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States if the leasehold and improvements are acquired or constructed and used pursuant to the federal Military Housing Privatization Initiative of 1996. Any such leasehold interest and improvements are exempt from ad valorem taxation regardless of whether title is held by the United States and without necessity of filing an application for the exemption or receiving approval from the property appraiser. This act defines “improvements” to include actual housing units and any facilities that are directly related to such housing units, including any housing maintenance facilities, housing rental and management offices, parks and community centers, and recreational facilities. This law applies retroactively to January 1, 2007. See Chapter 2015-80, Section 1, Laws of Florida (CS for CS for HB 361).

### **2014 Changes to Statutory Law**

In 2014, several changes to statutory law were enacted. These changes affected administrative reviews of assessments beginning with either 2014 administrative reviews or 2015 administrative reviews, as noted below. These changes are addressed where relevant in various modules of this training, and below is a summary. Please refer to the chapter law to read the legislative changes in context with the surrounding statutory language. The chapter laws are available at <http://laws.flrules.org/>

### **2014 Statutory Changes Affecting Administrative Reviews Beginning in 2014**

Legislation enacted in 2014:

- Amended section 193.461, F.S., to provide that an applicant for the agricultural classification who does not file an application by the March 1 filing deadline, can file an application with the property appraiser on or before 25 days after the property appraiser mails the notice of proposed property taxes (TRIM notice). The application must include sufficient evidence that demonstrates the applicant was unable to apply in a timely manner or otherwise demonstrates extenuating circumstances warranting the classification. If the applicant files an application for the classification and fails to provide sufficient evidence to the property appraiser as required, the applicant may file a petition with the value adjustment board on or before 25 days after the property appraiser mails the notice of proposed property taxes (TRIM notice). This change is

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effective July 1, 2014, and applies to administrative reviews beginning in 2014. See Chapter 2014-150, Section 2, Laws of Florida (HB 7091).

### **2014 Statutory Changes Affecting Administrative Reviews Beginning in 2015**

Legislation enacted in 2014:

- Amended section 193.461, F.S., to provide that agricultural lands that participate in a dispersed water storage program under a contract with the Department of Environmental Protection or a water management district, which requires flooding of land, will retain the agricultural classification as long as the lands are included in the program or successor programs. The property appraiser will assess these lands as nonproductive agricultural lands. Lands that participate and are diverted from an agricultural use to a nonagricultural use shall be assessed under section 193.011, F.S. This change is effective July 1, 2014, and applies to assessments and administrative reviews beginning in 2015. See Chapter 2014-150, Section 2, Laws of Florida (HB 7091).
- Amended section 196.1995, F.S., to provide that, in order to qualify for the economic development exemption, the improvements to real property must be made or the tangible personal property must be added or increased after approval by motion or resolution of the local governing body, subject to ordinance adoption, or on or after the day the ordinance is adopted. This legislation is effective May 12, 2014, and applies to assessments and administrative reviews beginning in 2015. See Chapter 2014-40, Section 1, Laws of Florida (HB 7081).
- Moved the exemption for special districts to newly created section 189.055, F.S., from section 189.403, F.S. See Chapter 2014-22, Section 53, Laws of Florida (SB 1632).

### **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.

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

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

1. Determining whether the property appraiser established a presumption of correctness;
2. Determining whether the property appraiser's determination is incorrect, when applicable;
3. When appropriate, determining whether to revise the assessment or to remand the assessment to the property appraiser; and
4. Revising the assessment when required.

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

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

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

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

### **Administrative Rules and Forms, Effective March 30, 2010**

On February 24, 2010, the Governor and Cabinet, acting as the head of the Department, approved the following changes to the Florida Administrative Code:

1. The adoption of the Department's Rule Chapter 12D-9 and accompanying forms;
2. A partial repeal of the rules in Rule Chapter 12D-10; and
3. Amendments to Rule 12D-16.002, F.A.C., regarding forms to be used by the Board.

The original effective date of the rules and forms was March 30, 2010, and all updates through June 2018 are reflected in the 2018 training.

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

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

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

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

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

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

*"The department shall develop a uniform policies and procedures manual that shall be used by value adjustment boards, special magistrates, and taxpayers in proceedings before value adjustment boards. The manual shall be made available, at a minimum, on*



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1 *the department's website and on the existing websites of the clerks of circuit courts."*

2  
3 The Florida Department of Revenue has developed the Uniform Policies and  
4 Procedures Manual and has made it available, along with accompanying documents, on  
5 its website as stated below.

6  
7 Along with the accompanying documents listed below, the Uniform Policies and  
8 Procedures Manual must be made available on the existing website of the Board clerk  
9 in each of the 67 counties.

10  
11 The Department requests that Board clerks retain and use the document titles as  
12 provided in this manual when placing these documents on their websites.

13  
14 The Uniform Policies and Procedures Manual and Accompanying Documents:  
15 The three sets of documents described below are available on the Department's  
16 website at <http://floridarevenue.com/property/Pages/VAB.aspx>

17  
18 1. The "Uniform Policies and Procedures Manual" for value adjustment boards, which is  
19 composed of the following items:

- 20  
21 a) Taxpayer rights as provided in Florida Statutes and the recently adopted rules;  
22  
23 b) The recently adopted rules of procedure for value adjustment board proceedings;  
24  
25 c) Recently adopted forms for value adjustment boards;  
26  
27 d) Florida Statutes regarding value adjustment board procedures; and  
28  
29 e) A notice regarding the use of case law.

30  
31 Accompanying the Uniform Policies and Procedures Manual are two sets of documents  
32 titled:

- 33  
34 2. "Other Legal Resources Including Statutory Criteria," and  
35  
36 3. "Reference Materials Including Guidelines."

37  
38 Each of these three sets of documents contains an introduction that provides orientation  
39 on the authority, content, and use of that respective set.

40  
41 Board clerks must ensure that all members of the Board, special magistrates, and  
42 Board attorneys are provided with a copy of these three sets of documents.

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

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

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

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

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

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

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

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

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

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

### **Complete Text of Specific Legal Provisions for Taxpayer Rights**

Florida law provides specific rights for property taxpayers.

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

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

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

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

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

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

#### *(1) THE RIGHT TO KNOW.—*

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

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

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

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

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

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

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

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

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

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

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

41  
42 *(k) The right to have certain taxes and special assessments levied by special districts*  
43 *individually stated on the "Notice of Proposed Property Taxes and Proposed or Adopted*  
44 *Non-Ad Valorem Assessments" (see s. 200.069).*  
45

## 2018 Value Adjustment Board Training - Module 1

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

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

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

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

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

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

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

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

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

## 2018 Value Adjustment Board Training - Module 1

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

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

### 8 9 (3) *THE RIGHT TO REDRESS.—*

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

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

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

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

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

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

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

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

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

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

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

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

This rule section is titled "Taxpayer Rights in Value Adjustment Board Proceedings."

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

*"(1) Taxpayers are granted specific rights by Florida law concerning value adjustment board procedures.*

*(2) These rights include:*

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

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

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

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

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1 (e) The right to authorize another person to file a board petition on the taxpayer's  
2 property assessment;

3  
4 (f) The right, regardless of whether the petitioner initiates the evidence exchange, to  
5 receive from the property appraiser a copy of the current property record card  
6 containing information relevant to the computation of the current assessment, with  
7 confidential information redacted. This includes the right to receive such property record  
8 card when the property appraiser receives the petition from the board clerk, at which  
9 time the property appraiser will either send the property record card to the petitioner or  
10 notify the petitioner how to obtain it online;

11  
12 (g) The right to be sent prior notice of the date for the hearing of the taxpayer's petition  
13 by the value adjustment board and the right to the hearing within a reasonable time of  
14 the scheduled hearing;

15  
16 (h) The right to reschedule a hearing a single time for good cause, as described in this  
17 chapter;

18  
19 (i) The right to be notified of the date of certification of the county's tax rolls;

20  
21 (j) The right to represent himself or herself or to be represented by another person who  
22 is authorized by the taxpayer to represent the taxpayer before the board;

23  
24 (k) The right, in counties that use special magistrates, to a hearing conducted by a  
25 qualified special magistrate appointed and scheduled for hearings in a manner in which  
26 the board, board attorney, and board clerk do not consider any assessment reductions  
27 recommended by any special magistrate in the current year or in any previous year.

28  
29 (l) The right to have evidence presented and considered at a public hearing or at a time  
30 when the petitioner has been given reasonable notice;

31  
32 (m) The right to have witnesses sworn and to cross-examine the witnesses;

33  
34 (n) The right to be issued a timely written decision within 20 calendar days of the last  
35 day the board is in session pursuant to Section 194.034, F.S., by the value adjustment  
36 board containing findings of fact and conclusions of law and reasons for upholding or  
37 overturning the determination of the property appraiser or tax collector;

38  
39 (o) The right to advertised notice of all board actions, including appropriate narrative  
40 and column descriptions, in brief and nontechnical language;

41  
42 (p) The right to bring an action in circuit court to appeal a value adjustment board  
43 valuation decision or decision to disapprove a classification, exemption, portability  
44 assessment difference transfer, or to deny a tax deferral or to impose a tax penalty;



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

# 2017 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/Forms.aspx#ui-id-21>

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

<https://revenue.law.floridarevenue.com/Pages/Browse.aspx#3-18-26>

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:

<http://floridarevenue.com/dor/property/vab/ag.html>

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.

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

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

- 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

### **Learning Objectives**

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

- 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

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

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

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

*(a) Two members of the governing body of the county, elected by the governing body from among its members, one of whom shall be elected as the chair of the value 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**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Board clerk may delegate to a member of his or her staff the day-to-day responsibilities for the Board, but is ultimately responsible for the operation of the Board. See Rule 12D-9.006(1), F.A.C.

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

\* If the Board clerk determines that any of the requirements are not met, he or she shall contact the Board legal counsel or the Board chair regarding the deficiencies and shall cancel any scheduled hearings until the requirements are met. See Rule 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.



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

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

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

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

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

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

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

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

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

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

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

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

*(a) All filed documents;*

## 2018 Value Adjustment Board Training - Module 2

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

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

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

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

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

[Bulletin 2008-12](#)

[Bulletin 2008-18](#)

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

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

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

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

- (a) *The primary role of the board legal counsel shall be to advise the board on all aspects of the value adjustment board review process to ensure that all actions taken by the board and its appointees meet the requirements of law.*
- (b) *Board legal counsel shall advise the board in a manner that will promote and maintain a high level of public trust and confidence in the administrative review process.*

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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.

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

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

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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

### **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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- (a) *A special magistrate must not be an elected or appointed official or employee of the county.*
- (b) *A special magistrate must not be an elected or appointed official or employee of a taxing jurisdiction or of the State.*
- (c) *During a tax year in which a special magistrate serves, he or she must not represent any party before the board in any administrative review of property taxes.*
- (d) *All special magistrates must meet the qualifications specified in Section 194.035, F.S.”*

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

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

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

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

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

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

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

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

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

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

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

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

### **The Role of Special Magistrates**

The Florida Attorney General has recognized that:

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

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

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

- (a) *Accurately and completely preserve all testimony, documents received, and evidence admitted for consideration;*
- (b) *At the request of either party, administer the oath upon the property appraiser or tax collector, each petitioner and all witnesses testifying at a hearing;*

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(c) *Conduct all hearings in accordance with the rules prescribed by the Department and the laws of the state; and*

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

1. Provide the petitioner with a list and summary of evidence to be presented at the hearing accompanied by copies of documentation to be presented by the property appraiser at the hearing;
2. *Include in the evidence list the property record card; and*
3. In calculating the seven (7) days, use calendar days and not include the day of the hearing in the calculation, and count backwards from the day of the hearing. See Rule 12D-9.020(2)(b), F.A.C.

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

4  
5 Under Subsection 194.301(1), F.S., in a hearing on just, classified use, or assessed  
6 value, the property appraiser shall present evidence first. See Rule 12D-9.024(7), F.A.C.

7  
8 In the Board or special magistrate hearing, the property appraiser is responsible for  
9 presenting relevant and credible evidence in support of his or her determination. See  
10 Rule 12D-9.025(3)(a), F.A.C.

11  
12 A property appraiser shall not present undisclosed evidence that was not supplied to the  
13 petitioner as required under the evidence exchange rule, Rule 12D-9.020, F.A.C. See  
14 Rules 12D-9.020(7) and 12D-9.025(4)(f)2., F.A.C.

15  
16 After receiving a Board or special magistrate's remand decision from the Board clerk,  
17 the property appraiser shall follow the appropriate directions from the Board or special  
18 magistrate and shall produce a written remand review. See Rule 12D-9.029(8)(a), F.A.C.

19  
20 The property appraiser may provide data to assist the Board clerk with the notice of tax  
21 impact. See Rules 12D-9.005(2)(c) and 12D-9.038(1), F.A.C.

22  
23 When delivered by the Board, the property appraiser shall attach a copy of the Board's  
24 certification of the assessment roll to each copy of each assessment roll prepared by  
25 the property appraiser. See Rule 12D-9.037(1)(b), F.A.C.

26  
27 Other responsibilities of Florida property appraisers are set forth in Florida law.

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

28  
29  
30  
31 The petitioner is responsible for completing the applicable petition form in accordance  
32 with 2016 legislative amendments referenced in the following note. The updated petition  
33 forms in the Form DR-486 series are available at:

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

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

40  
41 The petitioner is responsible for paying the appropriate filing fee if required. See Rule  
42 12D-9.015(12)(b), F.A.C.

43  
44 The petitioner is responsible for timely filing the petition form in accordance with the  
45 requirements of Rule 12D-9.015(13), F.A.C.; or

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

4  
5   The petitioner must avoid ex parte communication as described in Rule 12D-  
6   9.017(1)(a), F.A.C.

7  
8   The petitioner must not influence the selection of any special magistrate. See Rule 12D-  
9   9.010(5)(b), F.A.C.

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

16  
17   Other aspects of the petitioner’s role in the value adjustment board process are  
18   specified in Rule Chapter 12D-9, F.A.C.  
19

## **Module 3: Procedures Before the Hearing**

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

- Avoiding Conflicts of Interest
- Organizational Meeting of the Value Adjustment Board
- Prehearing Checklist for the Value Adjustment Board
- Requirements for Petition Form and Filing Fee
- (NEW) [Persons Authorized to Sign and File Petitions](#)
- (NEW) [Procedures for Duplicate and Unauthorized Petitions](#)
- Procedures for Late Filed Petitions
- Acknowledgment of Timely Filed Petitions
- Requirements for Filing and Service of Documents
- Prohibition of Ex Parte Communication
- Representation of the Taxpayer
- Procedures for Scheduling Hearings
- Procedures for Notifying the Parties of the Scheduled Hearing
- 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

### **Learning Objectives**

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

- Identify and avoid conflicts of interest
- Recognize the requirements for the Board organizational meeting under Rule 12D-9.013(1), F.A.C.
- Identify the components of the Board's prehearing checklist
- Select the correct components for a completed petition form
- Recognize the requirements and procedures for a late filed petition
- Identify the requirements for the filing and service of documents
- Recognize ex parte communication and its remedies
- Identify the procedures and requirements for scheduling hearings
- Select the correct elements for a notice of hearing
- Recognize the conditions for rescheduling hearings
- Recognize the procedures for the exchange of evidence
- Identify the correct procedure for handling withdrawn or settled petitions
- Recognize the conditions for a summary disposition of a petition
- Identify the conditions under which a written decision must be produced

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### **Avoiding Conflicts of Interest**

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

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

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

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

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

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

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

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

### **Code of Judicial Conduct and Related Information**

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

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

- \* While there is no legal requirement that Boards, Board attorneys, or special magistrates adhere to the Code of Judicial Conduct, relevant parts of this code can be used to help promote a high level of public trust in the value adjustment board process.

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

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

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

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

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

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

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

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

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

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

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

### **Organizational Meeting of the Value Adjustment Board**

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

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

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\* 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.
  - b) All local administrative procedures and forms of the Board or special magistrates shall be made available to the public and shall be accessible on the Board clerk's website, if any;

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9. Discuss general information on Florida's property tax system, respective roles within this system, taxpayer opportunities to participate in the system, and property taxpayer rights;
10. Make available to the public, special magistrates and Board members, Rules 12D-51.001, 51.002, 51.003, F.A.C., and Chapters 192 through 195, F.S., as reference information containing the guidelines and statutes applicable to assessments and assessment administration;
11. Adopt or ratify by resolution any filing fee for petitions for that year, in an amount not to exceed \$15; and
12. For purposes of this rule, making available to the public means, in addition to having copies at the meeting, the Board may refer to a website containing copies of such documents.

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

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

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

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

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

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

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

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

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

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



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1  
2 *(g) The department's uniform value adjustment board procedures, consisting of this rule*  
3 *chapter, were made available at the organizational meeting and copies were provided to*  
4 *special magistrates and board members;*

5  
6 *(h) The department's uniform policies and procedures manual is available on the*  
7 *existing website of the board clerk, if the board clerk has a website;*  
8

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

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

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

25 *(l) All procedures and forms of the board or special magistrate are in compliance with*  
26 *Chapter 194, F.S., and this rule chapter;*  
27

28 *(m) The board is otherwise in compliance with Chapter 194, F.S., and this rule chapter;*  
29 *and*  
30

31 *(n) Notice has been given to the chief executive officer of each municipality as provided*  
32 *in Section 193.116, F.S.*  
33

34 *(2) The board clerk shall notify the board legal counsel and the board chair of any action*  
35 *needed to comply with subsection (1)."*  
36  
37

### **Requirements for Petition Form and Filing Fee**

38  
39 For the purpose of requesting a hearing before the Board, the Department prescribes  
40 the Form DR-486 series. See Rule 12D-9.015(1)(a), F.A.C.  
41

42 \* These forms are available on the Department's website at the following link:  
43 <http://floridarevenue.com/property/Pages/Forms.aspx>  
44

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

4  
5 \* Current and up-to-date petition forms must be used.  
6

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

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

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

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the taxpayer's authorization to file the petition on the taxpayer's behalf together with checkboxes for professional information and spaces for license numbers;

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

7. Contain a space for the petitioner to indicate whether the property is four or less residential units or another property type, provided the Board clerk shall accept the petition even if this space is not filled in; and

8. Contain a statement that a tangible personal property assessment may not be contested until a return required by section 193.052, F.S., is timely filed.

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

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

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

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

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

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

4  
5 Under Rule 12D-9.015(12)(b), F.A.C., a completed petition is one that:

- 6  
7 1. Provides information for all the required elements that are displayed on the  
8 Department's form;
- 9 2. Is accompanied by a power of attorney if required;
- 10 3. Is accompanied by written taxpayer authorization if required; and,
- 11 4. Is accompanied by the appropriate filing fee if required.

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

17  
18 If an incomplete petition is received, the Board clerk shall notify the petitioner and give  
19 the petitioner an opportunity to complete and re-file the petition within 10 calendar days  
20 from the date the notice of incomplete petition is mailed. See Rules 12D-9.007(6) and 12D-  
21 9.015(12)(a), F.A.C.

22  
23 \* A completed petition shall be considered timely if completed and re-filed within the  
24 time frame provided in the Board clerk's notice of incomplete petition. See Rule 12D-  
25 9.015(12)(a), F.A.C.

26  
27 Petitions related to valuation issues may be filed at any time during the taxable year but  
28 must be filed on or before the 25th day following the mailing of the notice of proposed  
29 property taxes. See Rule 12D-9.015(13), F.A.C.

30  
31 \* Filing timeframes for other types of petitions are specified in Rule 12D-9.015(13),  
32 F.A.C.

33  
34 To petition either a denial of a portability assessment limitation transfer or the amount of  
35 the transfer, a petitioner may file, on Form DR-486PORT, a petition with the Board in  
36 the county where the new homestead is located. See Rule 12D-9.028(2), F.A.C.

37  
38 \* This portability petition may be filed at any time during the taxable year but must be  
39 filed on or before the 25th day following the mailing of the notice of proposed  
40 property taxes as provided in section 194.011, F.S. See Rule 12D-9.028(2), F.A.C.

### **(NEW) Persons Authorized to Sign and File Petitions**

41  
42  
43 The following persons may sign and file petitions with the value adjustment board. See  
44 Rule 12D-9.015(9), F.A.C.

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- 1 • The taxpayer may sign and file a petition.
- 2
- 3 • An employee of the taxpayer or of an affiliated entity or a licensed or certified
- 4 professional listed in paragraph 12D-9.018(3)(a), F.A.C., who the taxpayer has
- 5 authorized to file a petition and represent the taxpayer and who certifies under
- 6 penalty of perjury that he or she has the taxpayer's authorization to file a petition on
- 7 the taxpayer's behalf and represent the taxpayer, may sign and file such a petition
- 8 that is not signed by the taxpayer and that is not accompanied by the taxpayer's
- 9 written authorization.
- 10
- 11 • A compensated person, who is not an employee of the taxpayer or of an affiliated
- 12 entity and who is not acting as a licensed or certified professional listed in paragraph
- 13 12D-9.018(3)(a), F.A.C., may sign and file a petition on the taxpayer's behalf if the
- 14 taxpayer has authorized such person by power of attorney. If the petition is not
- 15 signed by the taxpayer, such person must provide a copy of the power of attorney to
- 16 the board clerk at the time the petition is filed. This power of attorney is valid only for
- 17 representing a single taxpayer in a single assessment year, and must identify the
- 18 parcels or accounts for which the person is authorized to represent the taxpayer and
- 19 must conform to the requirements of Chapter 709, Part II, F.S. A taxpayer may use a
- 20 Department of Revenue form to grant the power of attorney or may use a different
- 21 form provided it meets the requirements of Chapter 709, Part II, and Section
- 22 194.034(1), F.S. The Department has adopted Form DR-486POA, Power of Attorney
- 23 for Representation Before the Value Adjustment Board, which is incorporated by
- 24 reference in Rule 12D-16.002, F.A.C., as a form available to taxpayers for granting
- 25 the power of attorney.
- 26
- 27 • An uncompensated person, who has a taxpayer's signed written authorization to
- 28 represent the taxpayer, is authorized to sign and file a petition on the taxpayer's
- 29 behalf if, at the time the petition is filed, such person provides a copy of the
- 30 taxpayer's written authorization to the Board clerk with the petition or the taxpayer's
- 31 signed written authorization is contained on the petition form. This written
- 32 authorization is valid only for representing a single taxpayer in a single assessment
- 33 year and must identify the parcels or accounts for which the person is authorized to
- 34 represent the taxpayer. A taxpayer may use a Department of Revenue form to grant
- 35 the authorization in writing or may use a different form provided it meets the
- 36 requirements of Section 194.034(1), F.S. The Department has adopted Form DR-
- 37 486A, Written Authorization for Representation Before the Value Adjustment Board,
- 38 which is incorporated by reference in Rule 12D-16.002, F.A.C., as a form available to
- 39 taxpayers for granting the written authorization.
- 40
- 41

### **(NEW) Procedures for Duplicate and Unauthorized Petitions**

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

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

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

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

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

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

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

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

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

1. Personal, family, or business crisis or emergency at a critical time or for an extended period of time that would cause a reasonable person's attention to be diverted from filing; or
2. Physical or mental illness, infirmity, or disability that would reasonably affect the petitioner's ability to timely file; or
3. Miscommunication with, or misinformation received from, the Board clerk, property appraiser, or their staff regarding the necessity or the proper procedure for filing that would cause a reasonable person's attention to be diverted from timely filing; or

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4. Any other cause beyond the control of the petitioner that would prevent a reasonably prudent petitioner from timely filing.

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

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

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

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

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

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

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

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

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

### **Acknowledgment of Timely Filed Petitions**

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

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

4  
5 When the property appraiser receives the petition from the Board clerk, regardless of  
6 whether the petitioner initiates the evidence exchange, the property appraiser shall  
7 provide to the petitioner a copy of the property record card containing information  
8 relevant to the computation of the current assessment, with confidential information  
9 redacted. The property appraiser shall provide such property record card to the  
10 petitioner either by sending it to the petitioner or by notifying the petitioner how to obtain  
11 it online. See Rule 12D-9.015(16), F.A.C.

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

16  
17 \* The Board clerk will have prima facie complied with the requirements of this section  
18 if the notice was deposited in the U.S. mail thirty (30) days prior to the day of such  
19 scheduled appearance. See Rule 12D-9.015(17), F.A.C.

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

22  
23 In construing these rules or any order of the Board, special magistrate, or a Board  
24 designee, filing shall mean received by the Board clerk during open hours or by the  
25 Board, special magistrate, or a Board designee during a meeting or hearing. See Rule  
26 12D-9.016(1), F.A.C.

27  
28 Any hand-delivered or mailed document received by the office of the Board clerk, after  
29 close of business as determined by the Board clerk, shall be considered as filed the  
30 next regular business day. See Rule 12D-9.016(2)(a), F.A.C.

31  
32 If the Board clerk accepts documents filed by fax or other electronic transmission,  
33 documents received on or after 11:59:59 P.M. of the day they are due shall be  
34 considered as filed the next regular business day. See Rule 12D-9.016(2)(b), F.A.C.

35  
36 If the Board and the Board clerk have the necessary electronic resources and no party  
37 is prejudiced, any document that is required to be filed, served, provided, or made  
38 available may be filed, served, provided, or made available electronically. See Rule 12D-  
39 9.016(2)(c), F.A.C.

40  
41 Rule 12D-9.007(10), F.A.C., requires the Board clerk to notify petitioners of the Board's  
42 decisions either by first class mail or by electronic means as set forth in section  
43 194.034(2) or 192.048, F.S. Section 192.048, F.S., authorizes the electronic  
44 transmission of Board final decisions under certain conditions when the recipient has  
45 consented in writing to receive the document electronically, and section 194.034(2),



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1 F.S., provides for electronic transmission of Board decisions if the taxpayer has  
2 selected the electronic option on the originally filed petition.

3  
4 Any party who elects to file any document by fax or other electronic transmission shall  
5 be responsible for any delay, disruption, or interruption of the electronic signals and  
6 accepts the full risk that the document may not be properly filed with the Board clerk as  
7 a result. See Rule 12D-9.016(4), F.A.C.

8  
9 Local procedure may supersede provisions regarding the number of copies that must be  
10 provided. See Rule 12D-9.016(2)(d), F.A.C.

11  
12 When a party files a document with the Board, other than the petition, that party shall  
13 serve copies of the document to all parties in the proceeding. See Rule 12D-9.016(3),  
14 F.A.C.

15  
16 Under Rule 12D-9.016(3), F.A.C., when a document is filed that does not clearly  
17 indicate it has been provided to the other party, then the Board clerk, Board legal  
18 counsel, Board members, and special magistrates shall:

- 19  
20 1. Inform the filing party of the requirement to provide a copy of the document to the  
21 other party; or  
22  
23 2. Shall exercise care to ensure that a copy is provided to the other party and that no  
24 ex parte communication occurs.  
25  
26

### 27 **Prohibition of Ex Parte Communication**

28 A participant shall not communicate with a Board member or the special magistrate  
29 regarding the issues in the petition without:

- 30  
31 1. The other party being present; or  
32  
33 2. Providing a copy of any written communication to the other party. See Rule 12D-  
34 9.017(1)(a), F.A.C.  
35  
36 \* In this context, “participant” includes the petitioner, the property appraiser, the Board  
37 clerk, the special magistrate, a Board member, any other person directly or indirectly  
38 interested in the proceeding, and anyone authorized to act on behalf of any party.  
39  
40 \* This rule shall not prohibit internal communications among the Board clerk, Board,  
41 special magistrates, and Board legal counsel, regarding internal operations of the  
42 Board and other administrative matters. See Rule 12D-9.017(1)(b), F.A.C.  
43  
44 \* The special magistrate is specifically authorized to communicate with the Board’s  
45 legal counsel or Board clerk on legal matters or other issues regarding a petition.  
46 See Rule 12D-9.017(1)(b), F.A.C.

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

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

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

### **Representation of the Taxpayer**

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

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

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

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

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

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

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

4. An uncompensated person who provides to the board clerk at the time the petition is filed, the taxpayer's written authorization for such person to act on the taxpayer's behalf, may represent the taxpayer. This written authorization is valid only for representing a single taxpayer in a single assessment year and must identify the parcels or accounts for which the person is authorized to represent the taxpayer. A taxpayer may use a Department of Revenue form to grant the authorization in writing or may use a different form provided it meets the requirements of Section 194.034(1), F.S. The Department has adopted Form DR-486A, titled Written Authorization for Representation Before the Value Adjustment Board, which is incorporated by reference in Rule 12D-16.002, F.A.C., as a form available to taxpayers for granting the written authorization. See Rule 12D-9.018(3)(c), F.A.C.

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

### **Procedures for Scheduling Hearings**

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

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

1. The petitioner's anticipated amount of time if indicated on the petition;

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2. The experience of the petitioner;
3. The complexity of the issues or the evidence to be presented;
4. The number of petitions/parcels to be heard at a single hearing;
5. The efficiency or difficulty for the petitioner of grouping multiple hearings for a single petitioner on the same day; and
6. The likelihood of withdrawals, cancellations of hearings or failure to appear.

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

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

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

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

**Note:** Legislation enacted in 2018, effective July 1, 2018, provides for administrative reviews of denials of tax abatements for property damaged or destroyed by specific hurricanes in either 2016 or 2017. Since such abatements involve calculations based on specific information from these prior years, these administrative reviews are retrospective and are not connected to the process referenced above in Rule 12D-9.019(2), F.A.C. Accordingly, the scheduling of hearings for administrative reviews on denials of such tax abatements are not governed by dates of public hearings on

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tentative budgets or proposed millage rates. See section 197.318(1)(e), F.S., created by Chapter 2018-118, Sections 14 and 17, Laws of Florida (CS/HB 7087).

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

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

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

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

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

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

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

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

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

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

1. The parcel number, account number or legal address of all properties being heard at the scheduled hearing;
2. The type of hearing scheduled;
3. The date and time of the scheduled hearing; however, if the petition has been scheduled to be heard within a block of time, the beginning and ending of that block of time shall be indicated on the notice;
4. The time reserved, or instructions on how to obtain this information;

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5. The location of the hearing, including the hearing room number if known, together with Board clerk contact information including office address and telephone number, for petitioners to request assistance in finding hearing rooms;
6. Instructions on how to obtain a list of the potential special magistrates for the type of petition in question;
7. A statement of the petitioner's right to participate in the exchange of evidence with the property appraiser;
8. A statement that the petitioner has the right to reschedule the hearing a single time for good cause as defined in Section 194.032(2)(a), F.S.;
9. A statement that Section 194.032(2)(a), F.S., defines "good cause" as circumstances beyond the control of the person seeking to reschedule the hearing which reasonably prevent the party from having adequate representation at the hearing;
10. Instructions on bringing copies of evidence;
11. Any information necessary to comply with federal or state disability or accessibility acts; and
12. Information regarding where the petitioner may obtain a copy of the uniform rules of procedure.

### **Procedures for Rescheduling Hearings**

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

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

- The Board clerk shall ascertain if the opposing party has been furnished a copy of the request, and if not, shall furnish the request to the opposing party. The Board clerk shall promptly forward the reschedule request to the Board or a Board designee to make a determination as to good cause; for this determination, the Board designee includes the Board clerk, Board legal counsel, or a special magistrate.
- The Board or Board designee shall grant the hearing reschedule for any request that qualifies under Section 194.032(2)(a), F.S. The Board or Board designee may act upon the request based on its face and whether it meets the provisions for good cause on its face.

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- 1 • If the Board or a Board designee determines that the request does not show good  
2 cause, the request will be denied and the Board may proceed with the hearing as  
3 scheduled.  
4
- 5 • If the Board or a Board designee determines that the request demonstrates good  
6 cause, the request will be granted.  
7
- 8 • Requests to reschedule shall be processed without delay and the processing shall be  
9 accelerated where necessary to ensure, if possible, that the parties are provided  
10 notice of the determination before the original hearing time.  
11
- 12 • The Board clerk shall give prompt notice to the parties of the determination as to  
13 good cause. Form DR-485WCN, Value Adjustment Board – Clerk’s Notice, is  
14 designated and may be used for this purpose. Form DR-485WCN is adopted and  
15 incorporated by reference in Rule 12D-16.002, F.A.C.  
16
- 17 • If good cause is found, the clerk shall give immediate notice of cancellation of the  
18 hearing and shall proceed as provided in paragraph (h).  
19
- 20 • The clerk must receive any notice of conflict dates submitted by a party before notice  
21 of a rescheduled hearing is sent to both parties or before expiration of any period  
22 allowed by the clerk or Board to both parties for such submittal.  
23
- 24 • The clerk must reschedule considering conflict dates received and should  
25 accommodate a notice of conflict dates when any associated delay will not be  
26 prejudicial to the Board’s performance of its functions in the taxing process.  
27
- 28 • The Board clerk is responsible for notifying the parties of any rescheduling and will  
29 issue a notice of hearing with the new hearing date which shall, if possible, be the  
30 earliest date that is convenient for all parties.  
31
- 32 • When rescheduling hearings under this rule, if the parties are unable to agree on an  
33 earlier date, the Board clerk is authorized to schedule the hearing and send a notice  
34 of such hearing by regular or certified U.S. mail or personal delivery, or in the manner  
35 requested by the petitioner on the petition Form DR-486, so that the notice shall be  
36 received by the petitioner no less than fifteen (15) calendar days prior to the day of  
37 such scheduled appearance, unless this notice is waived by both parties.  
38
- 39 • The Board clerk is authorized to inquire if a party wants their evidence considered in  
40 the event of their absence from the hearing.  
41
- 42 • The clerk is authorized to ask the parties if they will waive the 15 days’ notice for  
43 rescheduled hearings; however, the parties are not required to do so.  
44
- 45 • A party must not assume the request to reschedule has been granted until notified by  
46 the clerk.

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1  
2 Rule 12D-9.019(5), F.A.C., provides that if a hearing is rescheduled by a party, the  
3 Board clerk must notify the petitioner of the rescheduled time in the manner referenced  
4 in Rule 12D-9.019(3), F.A.C., so that the notice shall be received no less than fifteen  
5 (15) calendar days prior to the day of such rescheduled appearance, unless this notice  
6 is waived by both parties.

7  
8  
9 \* Form DR-485WCN is designated by the Department and may be used for giving this  
10 notice.

11  
12 \* This form is available on the Department's website at the following link:  
13 <http://floridarevenue.com/property/Pages/Forms.aspx>

14  
15 \* A current and up-to-date form must be used.

16  
17 If a hearing is rescheduled, the deadlines for the exchange of evidence shall be  
18 computed from the new hearing date, if time permits. See Rule 12D-9.019(6), F.A.C.

19  
20 If a petitioner's hearing does not commence as scheduled, the Board clerk is authorized  
21 to reschedule a petition. See Rule 12D-9.019(7)(a), F.A.C.

22  
23 \* In no event shall a petitioner be required to wait more than a reasonable time after  
24 the scheduled time to be heard or, if the petition has been scheduled to be heard  
25 within a block of time, after the beginning of the block of time. A reasonable time  
26 must not exceed two hours. See Rule 12D-9.019(7)(b), F.A.C.

27  
28 \* The Board clerk is authorized to find that a reasonable time, not to exceed two  
29 hours, has elapsed based on other commitments, appointments, or hearings of the  
30 petitioner, lateness in the day, and other hearings waiting to be heard earlier than  
31 the petitioner's hearing with the Board or special magistrate. See Rule 12D-  
32 9.019(7)(b), F.A.C.

33  
34 \* If his or her petition has not been heard within a reasonable time (not to exceed two  
35 hours), the petitioner may request to be heard immediately. See Rule 12D-9.019(7)(b),  
36 F.A.C.

37  
38 \* If the Board clerk finds that a reasonable time has elapsed and petitioner is not  
39 heard, the Board clerk shall reschedule the petitioner's hearing. See Rule 12D-  
40 9.019(7)(b), F.A.C.

41  
42 \* A rescheduling of a hearing under Rule 12D-9.019(7), F.A.C., is not a request by a  
43 party to reschedule a hearing for good cause under Rule 12D-9.019(4), F.A.C. See  
44 Rule 12D-9.019(7)(c), F.A.C.



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- 1 \* A petitioner is not required to wait any length of time as a prerequisite to filing an  
2 action in circuit court. See Rule 12D-9.019(7)(d), F.A.C.

3  
4 More information on rescheduling hearings is contained in the following section titled  
5 "Procedures for the Exchange of Evidence."  
6  
7

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

9 Section 194.011(4)(a), F.S., and Rule 12D-9.020(1)(a)1., F.A.C., provide that, at least  
10 fifteen (15) days before a petition hearing, the petitioner shall provide to the property  
11 appraiser a list of evidence to be presented at the hearing, a summary of evidence to be  
12 presented by witnesses, and copies of all documentation to be presented at the hearing.  
13

- 14 \* To calculate the fifteen (15) days, the petitioner shall use calendar days and shall  
15 not include the day of the hearing in the calculation, and shall count backwards from  
16 the day of the hearing. The last day of the period shall be included unless it is a  
17 Saturday, Sunday, or legal holiday, in which event the period shall run until the end  
18 of the next previous day that is neither a Saturday, Sunday, or legal holiday. See  
19 Rule 12D-9.020(1)(a)2., F.A.C.  
20

- 21 \* The summary of evidence to be presented by witnesses for the petitioner shall be  
22 sufficiently detailed as to reasonably inform a party of the general subject matter of  
23 the witness' testimony, and the name and address of the witness. See Rule 12D-  
24 9.020(5), F.A.C.  
25

- 26 \* However, Florida Statutes do not provide for exclusion of petitioner's evidence or  
27 other penalty for a case where a petitioner does not give evidence as provided in  
28 section 194.011(4)(a), F.S.  
29

- 30 \* Article I, Section 18, of the Florida Constitution, prohibits the imposition of any  
31 penalty except as provided by law.  
32

- 33 \* A petitioner's noncompliance with section 194.011(4)(a), F.S., does not affect the  
34 petitioner's right to receive a copy of the current property record card from the  
35 property appraiser as described in section 194.032(2)(a), F.S. See Rule 12D-  
36 9.020(1)(b), F.A.C.  
37

- 38 \* A petitioner's noncompliance with Rule 12D-9.020(1)(a), F.A.C., does not authorize  
39 a Board or special magistrate to exclude the petitioner's evidence. See Rule 12D-  
40 9.020(1)(c), F.A.C.  
41

42 Thus, if a petitioner does not comply with section 194.011(4)(a), F.S., the petitioner may  
43 still present evidence and the Board or the special magistrate may accept such  
44 evidence for consideration, unless the provisions of 194.034(1)(h), F.S., apply.  
45

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

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

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

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

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

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

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

\* The summary of evidence to be presented by witnesses for the property appraiser shall be sufficiently detailed as to reasonably inform a party of the general subject matter of the witness' testimony, and the name and address of the witness. See Rule 12D-9.020(5), F.A.C.

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

If the property appraiser does not provide the information to the petitioner within the time required by Rule 12D-9.020(2), F.A.C., the hearing shall be rescheduled to allow

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1 the petitioner additional time to review the property appraiser's evidence. See Rule 12D-  
2 9.020(3)(b), F.A.C.

3  
4 By agreement of the parties, the evidence exchanged under Rule 12D-9.020, F.A.C.,  
5 shall be delivered by regular or certified U.S. mail, personal delivery, overnight mail, fax  
6 or email. See Rule 12D-9.020(4), F.A.C.

7  
8 \* The petitioner and property appraiser may agree to a different timing and method of  
9 exchange. See Rule 12D-9.020(4), F.A.C.

10  
11 \* "Provided" means received by the party not later than the time frame provided in this  
12 rule section. See Rule 12D-9.020(4), F.A.C.

13  
14 \* If either party does not designate a desired manner for receiving information in the  
15 evidence exchange, the information shall be provided by U.S. mail. See Rule 12D-  
16 9.020(4), F.A.C.

17  
18 \* The property appraiser shall provide the information at the address listed on the  
19 petition form for the petitioner. See Rule 12D-9.020(4), F.A.C.

20  
21 A property appraiser shall not use at a hearing evidence that was not supplied to the  
22 petitioner as required. See Rule 12D-9.020(7), F.A.C.

23  
24 \* The remedy for such noncompliance shall be a rescheduling of the hearing to allow  
25 the petitioner an opportunity to review the information of the property appraiser. See  
26 Rule 12D-9.020(7), F.A.C.

27  
28 No petitioner may present for consideration, nor may a Board or special magistrate  
29 accept for consideration, testimony or other evidentiary materials that were specifically  
30 requested of the petitioner in writing by the property appraiser in connection with a filed  
31 petition, of which the petitioner had knowledge and denied to the property appraiser.  
32 See Rule 12D-9.020(8), F.A.C.

33  
34 \* Such evidentiary materials shall be considered timely if provided to the property  
35 appraiser no later than fifteen (15) days before the hearing in accordance with the  
36 exchange of evidence rules in this section. See Rule 12D-9.020(8), F.A.C.

37  
38 \* If provided to the property appraiser less than fifteen (15) days before the hearing,  
39 such materials shall be considered timely if the Board or special magistrate  
40 determines the materials were provided a reasonable time before the hearing, as  
41 described in paragraph 12D-9.025(4)(f), F.A.C. See Rule 12D-9.020(8), F.A.C.

42  
43 \* A petitioner's ability to introduce the evidence, requested of the petitioner in writing  
44 by the property appraiser, is lost if not provided to the property appraiser as  
45 described in Rule 12D-9.020(8), F.A.C.

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

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

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

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

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

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

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

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

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

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

1. Petitioner agrees with the determination of the property appraiser or tax collector;
2. Petitioner and property appraiser or tax collector have reached a settlement of the issues;
3. Petitioner does not agree with the decision or assessment of the property appraiser or tax collector but no longer wishes to pursue a remedy through the value adjustment board process; or
4. Other specified reason.

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

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1 If a property appraiser or tax collector agrees with a petition challenging a decision to  
2 deny an exemption, classification, portability assessment difference transfer, or deferral,  
3 the property appraiser or tax collector shall:

- 4
- 5 1. Issue the petitioner a notice granting said exemption, classification, portability  
6 assessment difference transfer, or deferral; and
- 7
- 8 2. File with the Board clerk a notice that the petition was acknowledged as correct.
- 9

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

13

14 If parties do not file a notice of withdrawal or notice of acknowledgment but indicate the  
15 same at the hearing, the Board or special magistrate shall so state on the hearing  
16 record and shall not proceed with the hearing and shall not issue a decision. See Rule  
17 12D-9.021(4), F.A.C.

18

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

23

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

26

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

29

30 For all withdrawn or settled petitions, a special magistrate shall not produce a  
31 recommended decision and the Board shall not produce a final decision. See Rule 12D-  
32 9.021(5), F.A.C.

### 33

### 34

### 35 **Non-Appealance and Summary Disposition of Petitions**

36 **NOTE:** The procedures in this training section do not apply to hearings on portability  
37 that are held in the county where the previous homestead was located when that county  
38 is different from the county where the new homestead is located. See Rule 12D-  
39 9.028(6)(d), F.A.C.

40

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

43

44 \* See Module 10 for information on petitions on assessment difference transfers  
45 (portability).

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

- 5
- 6 1. Not commence or proceed with the hearing; and
- 7
- 8 2. Produce a decision or recommended decision as described below and in Rule 12D-  
9 9.021(8), F.A.C. See Rule 12D-9.021(6), F.A.C.

10  
11 If the petitioner makes a good cause request before the decision or recommended  
12 decision is issued, the Board or Board designee shall rule on the good cause request  
13 before determining that:

- 14
- 15 1. The decision or recommended decision should be set aside and the hearing should  
16 be rescheduled; or
- 17
- 18 2. The Board or special magistrate should issue the decision or recommended  
19 decision. See Rule 12D-9.021(6), F.A.C.
- 20

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

- 24
- 25 1. The hearing should be rescheduled; or
- 26
- 27 2. The Board or special magistrate should issue a decision or recommended decision.  
28 See Rule 12D-9.021(7), F.A.C.
- 29

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

32  
33 \* If the Board or Board designee does not find good cause for the petitioner's failure to  
34 appear, the Board or special magistrate shall issue a decision or recommended  
35 decision. See Rule 12D-9.021(7)(b), F.A.C.

36  
37 Decisions issued under Rule Subsections 12D-9.021(6) or (7), F.A.C., shall not be  
38 treated as withdrawn or settled petitions and shall contain:

- 39
- 40 1. A finding of fact that the petitioner did not appear at the hearing and did not state  
41 good cause; and
- 42
- 43 2. A conclusion of law that the relief is denied and the decision is being issued in order  
44 that any right the petitioner may have to bring an action in circuit court is not  
45 impaired. See Rule 12D-9.021(8), F.A.C.
- 46

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

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

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

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

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

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

## **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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2. Notify the Board or special magistrate before or at the hearing that the petitioner has indicated he or she will not appear at the hearing, but would like for the Board or special magistrate to consider his or her evidence at the hearing; and

3. Give the evidence to the Board or special magistrate at the beginning of the hearing. See Rule 12D-9.024(9)(b), F.A.C.

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

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

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

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

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

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

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

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

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

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

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

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

### **Procedures for Commencement of a Hearing**

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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4. States that the law does not allow the Board or special magistrate to review any evidence unless it is presented on the record at the hearing or presented upon agreement of the parties while the record is open; and

5. States that the law requires the Board or special magistrate to evaluate the relevance and credibility of the evidence in deciding the results of the petition.

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

\* The Board or special magistrate then addresses any questions from the parties.

### **General Procedures for Conducting a Hearing**

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

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

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

1. Review the evidence presented by the parties;
2. Determine whether the evidence presented is admissible;
3. Admit the evidence that is admissible;
4. Identify the evidence presented to indicate that it is admitted or not admitted; and
5. Consider the admitted evidence.

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.

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

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

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

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

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

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

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

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

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

1. A petitioner does not appear at a hearing on a "portability" assessment difference transfer petition 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. A 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.

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 before the hearing. See Rule 12D-9.025(4)(d), F.A.C.

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

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

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

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

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

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

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

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

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



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

### **Examples of Taxpayer's Rebuttal Evidence**

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

#### **Rebuttal Evidence: Example 1**

The taxpayer initiates an evidence exchange with the property appraiser.

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

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

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

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

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

### Rebuttal Evidence: Example 2

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

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.

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.

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.

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.

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.

### Rebuttal Evidence: Example 3

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

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.

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.

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.

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.

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

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### **Admissibility of Evidence**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Bulletin: PTO 10-07](#)

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

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

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

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

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

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

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

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

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

***"Administrative penalties.— No administrative agency, except the Department of Military Affairs in an appropriately convened court-martial action 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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specifically requested of the petitioner in writing by the property appraiser in connection with a filed petition, of which the petitioner had knowledge and denied to the property appraiser.

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

\* Section 194.034(1)(h), F.S., does provide a penalty (exclusion of evidence) for a case where a property taxpayer does not provide the appropriate evidence when requested in writing by the property appraiser in connection with a filed Board petition.

\* The Higgs case did not involve the process provided in section 194.034(1)(h), F.S.

Since there is a separate statutory process for requesting and exchanging evidence in connection with a filed Board petition, until an appellate court or the Legislature expressly applies the Higgs decision in the context of the Board's statutory process, the Higgs decision does not apply in Board proceedings.

In the Higgs decision, since the court was not reviewing an administrative proceeding, the court's references to administrative review are not part of the holding in the case.

\* The references apparently originated from the form used by the property appraiser to request necessary financial records from property owners.

\* The Higgs decision's gratuitous reference to "administrative" is *obiter dictum*. See Doherty v. Brown, 14 So. 3d 1266, 1267 (Fla. 1st DCA 2009), stating: "[A] purely gratuitous observation or remark made in pronouncing an opinion and which concerns some rule, principle, or application of law not necessarily involved in the case or essential to its determination is *obiter dictum*, pure and simple."

\* The case of Higgs v. Good does not apply to Board proceedings (administrative reviews).

### **Standard of Proof**

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.

"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.

Under section 194.301, F.S., "preponderance of the evidence" is the standard of proof that applies in assessment challenges. See Rule 12D-9.025(3)(b), F.A.C.

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\* The “clear and convincing evidence” standard of proof no longer applies, starting with 2009 assessments. See Rule 12D-9.025(3)(b), F.A.C.

\* A taxpayer shall never have the burden of proving that the property appraiser’s assessment is not supported by any reasonable hypothesis of a legal assessment. See Rule 12D-9.025(3)(b), F.A.C.

NOTE: More information on standard of proof and how to apply it in administrative reviews is presented in Modules 6, 8, and 9.

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

When testimony is presented at a hearing, each party shall have the right to ask questions of any witness. See Rule 12D-9.025(5), F.A.C.

The Board or special magistrate shall have the authority, at a hearing, to ask questions at any time of either party, the witnesses, or Board staff. See Rule 12D-9.025(7)(b), F.A.C.

\* When asking questions, the Board or special magistrate shall not show bias for or against any party or witness. See Rule 12D-9.025(7)(b), F.A.C.

\* The Board or special magistrate shall limit the content of any question asked of a party or witness to matters reasonably related, directly or indirectly, to matters already in the record. See Rule 12D-9.025(7)(b), F.A.C.

In particular, the Board or special magistrate should ask any questions that are necessary to help the Board or special magistrate meet their duty of determining whether applicable statutory criteria have been satisfied.

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

By agreement of the parties entered in the record, the Board or special magistrate may leave the record open and postpone completion of the hearing to a date certain to allow a party to collect and provide additional relevant and credible evidence. See Rule 12D-9.025(6)(a), F.A.C.

\* Such postponements shall be limited to instances where, after completing original presentations of evidence, the parties agree to the collection and submittal of additional, specific factual evidence for consideration by the Board or special magistrate. See Rule 12D-9.025(6)(a), F.A.C.

\* In lieu of completing the hearing, upon agreement of the parties the Board or special magistrate is authorized to consider such evidence without further hearing. See Rule 12D-9.025(6)(a), F.A.C.

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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.

### **Procedures for Conducting a Hearing by Electronic Media**

34  
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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- \* The Board must provide a physical location at which a party may appear, if requested. See Rule 12D-9.026(1)(c), F.A.C.

For any hearing conducted by electronic media, the Board shall ensure that all equipment is adequate and functional for allowing clear communication among the participants and for creating the hearing records required by law.

- \* The Board procedures shall specify the time period within which a party must request to appear at a hearing by electronic media. See Rule 12D-9.026(2), F.A.C.

Consistent with Board equipment and procedures:

- \* Any party may request to appear at a hearing before a Board or special magistrate, using telephonic or other electronic media. See Rule 12D-9.026(3)(a), F.A.C.

- \* However, unless required by other provisions of state or federal law, the Board clerk need not comply with such a request if such telephonic or electronic media are not reasonably available. See Rule 12D-9.026(3)(a), F.A.C.

- \* If the Board or special magistrate allows a party to appear by telephone, all members of the Board in the hearing or the special magistrate must be physically present in the hearing room. See Rule 12D-9.026(3)(a), F.A.C.

- \* The parties must also all agree on the methods for swearing witnesses, presenting evidence, and placing testimony on the record. Such methods must comply with the provisions of this rule chapter. See Rule 12D-9.026(3)(b), F.A.C.

- \* The agreement of the parties must include which parties must appear by telephonic or other electronic media and which parties will be present in the hearing room. See Rule 12D-9.026(3)(b), F.A.C.

Hearings conducted by electronic media must be open to the public either by providing the ability for interested members of the public to join the hearing electronically or to monitor the hearing at the location of the Board or special magistrate. See Rule 12D-9.026(4), F.A.C.

## **Module 5: Procedures After the Hearing**

### **Training Module 5 addresses the following topics:**

- Procedures for Remanding Value Assessments to the Property Appraiser
- Procedures for Recommended Decisions by Special Magistrates
- Procedures for Consideration and Adoption of Recommended Decisions by Boards
- Procedures for Final Decisions by Boards
- Further Judicial Proceedings
- Requirements for the Record of the Hearing
- Requirements for Certification of Assessment Rolls
- Requirements for Public Notice of Findings and Results of the Board

### **Learning Objectives**

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

- Identify and apply the procedures for remanding value assessments
- Recognize the procedures and requirements for recommended decisions
- Identify and apply the procedures for consideration and adoption of recommended decisions
- Recognize the procedures and requirements for final decisions
- Identify and apply the requirements for the record of the hearing
- Recognize the requirements and procedures for certification of assessment rolls
- Identify the requirements for public notice of findings and results of the Board

### **Procedures for Remanding Value Assessments to the Property Appraiser**

In this training, the term “remand” means to send the assessment back to the property appraiser with appropriate directions for establishing the value of the petitioned property.

Rules 12D-9.029(1) and 12D-9.027(2) and (3), F.A.C., require the Board or appraiser special magistrate to remand a value assessment to the property appraiser when the Board or special magistrate has concluded that:

1. The property appraiser did not establish a presumption of correctness, or has concluded that the property appraiser established a presumption of correctness that is overcome, as provided in Rule 12D-9.027, F.A.C.; and

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2. The record does not contain the competent substantial evidence necessary for the Board or special magistrate to establish a revised just value, classified use value, or assessed value, as applicable.

An attorney special magistrate shall remand an assessment to the property appraiser for a classified use valuation when the special magistrate has concluded that a property classification will be granted. See Rule 12D-9.029(2), F.A.C.

In a petition heard by the Board, Rule 12D-9.029(3), F.A.C., requires the Board to remand an assessment to the property appraiser for a classified use valuation when the Board:

1. Has concluded that a property classification will be granted; and
2. Has concluded that the record does not contain the competent substantial evidence necessary for the Board to establish classified use value.

For remanding an assessment to the property appraiser, the Board or special magistrate shall produce a written remand decision that shall include appropriate directions to the property appraiser. See Rule 12D-9.029(6), F.A.C.

Rule 12D-9.029(4), F.A.C., provides that the Board or special magistrate shall produce written findings of fact and conclusions of law necessary to determine that a remand is required, but shall not render a recommended or final decision until after a continuation hearing is held or waived as provided in Rule 12D-9.029(9), F.A.C.

\* For producing these findings and conclusions and remanding an assessment, the Board or special magistrate is required to use Form DR-485R. See Rule 12D-9.029(4), F.A.C.

\* The Form DR-485R is available on the Department's website at the following link: <http://floridarevenue.com/property/Pages/Forms.aspx>

\* Boards and special magistrates are required to use current and up-to-date forms.

When an attorney special magistrate remands an assessment to the property appraiser for classified use valuation, an appraiser special magistrate retains authority to produce a recommended decision in accordance with law. See Rule 12D-9.029(5), F.A.C.

When an appraiser special magistrate remands an assessment to the property appraiser, the special magistrate retains authority to produce a recommended decision in accordance with law. See Rule 12D-9.029(5), F.A.C.

When the Board remands an assessment to the property appraiser, the Board retains authority to make a final decision on the petition in accordance with law. See Rule 12D-9.029(5), F.A.C.

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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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\* This decision or recommended decision shall contain:

1. A finding of fact that the petitioner did not request a continuation hearing or waived such hearing; and
2. A conclusion of law that the decision is being issued in order that any right the petitioner may have to bring an action in circuit court is not impaired. See Rule 12D-9.029(9)(b), F.A.C.

\* The petition shall be treated and listed as Board action for purposes of the notice required by Rule 12D-9.038, F.A.C. See Rule 12D-9.029(9)(b), F.A.C.

At a continuation hearing, the Board or special magistrate shall receive and consider the property appraiser's written remand review and additional relevant and credible evidence, if any, from the parties. See Rule 12D-9.029(9)(c), F.A.C.

\* Also, the Board or special magistrate may consider evidence admitted at the original hearing. See Rule 12D-9.029(9)(c), F.A.C.

In those counties that use special magistrates, if an attorney special magistrate has granted a property classification before the remand decision and the property appraiser has produced a remand classified use value, a real property valuation special magistrate shall conduct the continuation hearing. See Rule 12D-9.029(10), F.A.C.

In no case shall a Board or special magistrate remand to the property appraiser an exemption, "portability" assessment difference transfer, or property classification determination. See Rule 12D-9.029(11), F.A.C.

Copies of all evidence shall remain with the Board clerk and be available during the remand process. See Rule 12D-9.029(12), F.A.C.

In lieu of remand, the Board or special magistrate may postpone conclusion of the hearing upon agreement of the parties if the requirements of Rule 12D-9.025(6), F.A.C., are met. See Rule 12D-9.029(13), F.A.C.

### **Procedures for Recommended Decisions by Special Magistrates**

For each petition not withdrawn or settled, special magistrates shall produce a written recommended decision that contains findings of fact, conclusions of law, and reasons for upholding or overturning the property appraiser's determination. See Rule 12D-9.030(1), F.A.C.

The special magistrate and Board clerk shall observe the petitioner's right to be sent a timely written recommended decision containing proposed findings of fact and proposed

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1 conclusions of law and reasons for upholding or overturning the determination of the  
2 property appraiser. See Rule 12D-9.030(1), F.A.C.

3  
4 After producing a recommended decision, the special magistrate shall provide it to the  
5 Board clerk. See Rule 12D-9.030(1), F.A.C.

6  
7 The Board clerk shall provide copies of the special magistrate's recommended decision  
8 to the petitioner and the property appraiser as soon as practicable after receiving the  
9 recommended decision. See Rule 12D-9.030(2), F.A.C.

10  
11 1. If the Board clerk knows the date, time, and place at which the recommended  
12 decision will be considered by the Board, the Board clerk shall include such  
13 information when he or she sends the recommended decision to the petitioner and  
14 the property appraiser. See Rule 12D-9.030(2)(a), F.A.C.

15  
16 2. If the Board clerk does not yet know the date, time, and place at which the  
17 recommended decision will be considered by the Board, the Board clerk shall  
18 include information on how to find the date, time, and place of the meeting at which  
19 the recommended decision will be considered by the Board. See Rule 12D-  
20 9.030(2)(b), F.A.C.

21  
22 Any Board or special magistrate workpapers, worksheets, notes, or other materials that  
23 are made available to a party shall immediately be sent to the other party. See Rule 12D-  
24 9.030(3), F.A.C.

25  
26 \* Any workpapers, worksheets, notes, or other materials created by the Board or  
27 special magistrates during the course of hearings or during consideration of petitions  
28 and evidence, that contain any material prepared in connection with official  
29 business, shall be transferred to the Board clerk and retained as public records. See  
30 Rule 12D-9.030(3), F.A.C.

31  
32 \* Boards or special magistrates using standardized workpapers, worksheets, or notes,  
33 whether in electronic format or otherwise, must receive prior Department approval to  
34 ensure that such standardized documents comply with the law. See Rule 12D-  
35 9.030(3), F.A.C.

36  
37 For the purpose of producing the recommended decisions of special magistrates, the  
38 Department prescribes the Form DR-485 series, and any electronic equivalent forms  
39 approved by the Department under Section 195.022, F.S. See Rule 12D-9.030(4), F.A.C.

40  
41 \* The Form DR-485 series is available on the Department's website at the following  
42 link: <http://floridarevenue.com/property/Pages/Forms.aspx>

43  
44 \* Boards and special magistrates are required to use current and up-to-date forms.  
45

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- 1    \* Under Rule 12D-9.030(4), F.A.C., all recommended decisions of special  
2    magistrates, and all forms used for the recommended decisions, must contain the  
3    following required elements:  
4  
5       1. Findings of fact;  
6  
7       2. Conclusions of law; and  
8  
9       3. Reasons for upholding or overturning the determination of the property appraiser.

10  
11 As used in this training, the terms “findings of fact” and “conclusions of law” include  
12 proposed findings of fact and proposed conclusions of law produced by special  
13 magistrates in their recommended decisions. See Rule 12D-9.030(5), F.A.C.

14  
15 Legal advice from the Board legal counsel relating to the facts of a petition or to the  
16 specific outcome of a decision, if in writing, shall be included in the record and  
17 referenced within the findings of fact and conclusions of law. See Rule 12D-9.030(6),  
18 F.A.C.

- 19  
20    \* If not in writing, this legal advice shall be documented within the findings of fact and  
21    conclusions of law. See Rule 12D-9.030(6), F.A.C.  
22  
23

### **Procedures for Consideration and Adoption of Recommended Decisions by Boards**

24  
25  
26 All recommended decisions shall comply with Sections 194.301, 194.034(2), and  
27 194.035(1), F.S. See Rule 12D-9.031(1), F.A.C.  
28

- 29    \* A special magistrate shall not submit to the Board, and the Board shall not adopt,  
30    any recommended decision that is not in compliance with Sections 194.301,  
31    194.034(2), and 194.035(1), F.S. See Rule 12D-9.031(1), F.A.C.  
32

33 As provided in Sections 194.034(2) and 194.035(1), F.S., the Board shall consider the  
34 recommended decisions of special magistrates and may act upon the recommended  
35 decisions without further hearing. See Rule 12D-9.031(2), F.A.C.  
36

- 37    \* If the Board holds further hearing for such consideration, the Board clerk shall send  
38    notice of the hearing to the parties. See Rule 12D-9.031(2), F.A.C.  
39

- 40    \* Any notice of hearing shall be in the same form as specified in Rule 12D-9.019(3)(b),  
41    F.A.C., but need not include items specified in subparagraphs 6. through 9. of that  
42    subsection. See Rule 12D-9.031(2), F.A.C.  
43

- 44    \* The Board shall consider whether the recommended decisions meet the  
45    requirements of Rule 12D-9.031(1), F.A.C., and may rely on Board legal counsel for  
46    such determination. See Rule 12D-9.031(2), F.A.C.

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\* Adoption of recommended decisions need not include a review of the underlying record. See Rule 12D-9.031(2), F.A.C.

If the Board determines that a recommended decision meets the requirements of law, the Board shall adopt the recommended decision. See Rule 12D-9.031(3), F.A.C.

\* When a recommended decision is adopted and rendered by the Board, it becomes final. See Rule 12D-9.031(3), F.A.C.

Under Rule 12D-9.031(4), F.A.C., if the Board determines that a recommended decision does not comply with the requirements of law, the Board shall proceed as follows.

1. The Board shall request the advice of Board legal counsel to evaluate further action and shall take the steps necessary for producing a final decision in compliance with law.
2. The Board may direct a special magistrate to produce a recommended decision that complies with the law based on, if necessary, a review of the entire record.
3. The Board shall retain any recommended decisions and all other records of actions taken under Rule 12D-9.031, F.A.C.

### **Procedures for Final Decisions by Boards**

For each petition not withdrawn or settled, the Board shall produce a written final decision that contains findings of fact, conclusions of law, and reasons for upholding or overturning the property appraiser's determination. See Rule 12D-9.032(1)(a), F.A.C.

\* The Board may fulfill the requirement to produce a written final decision by adopting a recommended decision of the special magistrate containing the required elements and providing notice that it has done so. See Rule 12D-9.032(1)(a), F.A.C.

\* The Board may adopt the special magistrate's recommended decision as the decision of the Board by incorporating the recommended decision, using a postcard or similar notice. See Rule 12D-9.032(1)(a), F.A.C.

\* The Board shall ensure regular and timely approval of recommended decisions. See Rule 12D-9.032(1)(a), F.A.C.

Legal advice from the Board legal counsel relating to the facts of a petition or to the specific outcome of a decision, if in writing, shall be included in the record and referenced within the findings of fact and conclusions of law. See Rule 12D-9.032(1)(b), F.A.C.



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1 \* If not in writing, such advice shall be documented within the findings of fact and  
2 conclusions of law. See Rule 12D-9.032(1)(b), F.A.C.

3  
4 A final decision of the Board shall state the just, assessed, taxable, and exempt value,  
5 for the county both before and after Board action. See Rule 12D-9.032(2), F.A.C.

6  
7 \* Board action shall not include changes made as a result of action by the property  
8 appraiser. See Rule 12D-9.032(2), F.A.C.

9  
10 \* If the property appraiser has reduced his or her value or granted an exemption,  
11 property classification, or "portability" assessment difference transfer, whether before  
12 or during the hearing but before Board action, the values in the "before" column shall  
13 reflect the adjusted figure before Board action. See Rule 12D-9.032(2), F.A.C.

14  
15 The Board's final decision shall advise the taxpayer and property appraiser that further  
16 proceedings in circuit court shall be as provided in Section 194.036, F.S. See Rule 12D-  
17 9.032(3), F.A.C.

18  
19 Upon issuance of a final decision by the Board, the Board shall provide it to the Board  
20 clerk and the Board clerk shall promptly provide notice of the final decision to the  
21 parties. See Rule 12D-9.032(4), F.A.C.

22  
23 \* Notice of the final decision may be made by providing a copy of the decision. See  
24 Rule 12D-9.032(4), F.A.C.

25  
26 \* The Board shall issue all final decisions within 20 calendar days of the last day the  
27 Board is in session pursuant to Section 194.034, F.S. See Rule 12D-9.032(4), F.A.C.

28  
29 \* Notification of the petitioner must be by first class mail or by electronic means as set  
30 forth in section 194.034(2) or section 192.048, F.S. See Rule 12D-9.007(10), F.A.C.

31  
32 For the purpose of producing the final decisions of the Board, the Department  
33 prescribes the Form DR-485 series, and any electronic equivalent forms approved by  
34 the Department under Section 195.022, F.S. See Rule 12D-9.032(5), F.A.C.

35  
36 \* The Form DR-485 series is available on the Department's website at the following  
37 link: <http://floridarevenue.com/property/Pages/Forms.aspx>

38  
39 \* Boards and special magistrates are required to use current and up-to-date forms.

40  
41 \* The Form DR-485 series, or approved electronic equivalent forms, are the only  
42 forms that shall be used for producing a final decision of the Board. See Rule 12D-  
43 9.032(5), F.A.C.

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- 1 \* Before using any form to notify petitioners of the final decision, the Board shall  
2 submit the proposed form to the Department for approval. See Rule 12D-9.032(5),  
3 F.A.C.  
4
- 5 \* The Board shall not use a form to notify the petitioner unless the Department has  
6 approved the form. See Rule 12D-9.032(5), F.A.C.  
7
- 8 \* Under Rule 12D-9.032(5), F.A.C., all decisions of the Board, and all forms used to  
9 produce final decisions on petitions heard by the Board, must contain the following  
10 required elements:  
11
- 12 1. Findings of fact;
  - 13
  - 14 2. Conclusions of law; and
  - 15
  - 16 3. Reasons for upholding or overturning the determination of the property appraiser.  
17
- 18 If, prior to a final decision, any communication is received from a party concerning a  
19 Board process on a petition or concerning a recommended decision, a copy of the  
20 communication shall promptly be furnished to all parties, the Board clerk, and the Board  
21 legal counsel. See Rule 12D-9.032(6)(a), F.A.C.  
22
- 23 \* No such communication shall be furnished to the Board or a special magistrate  
24 unless a copy is immediately furnished to all parties. See Rule 12D-9.032(6)(a), F.A.C.  
25
- 26 \* A party may waive notification or furnishing of copies under Rule 12D-9.032(6)(a),  
27 F.A.C.  
28
- 29 \* The Board legal counsel shall respond to such communication and may advise the  
30 Board concerning any action the Board should take concerning the communication.  
31 See Rule 12D-9.032(6)(b), F.A.C.  
32
- 33 \* No reconsideration of a recommended decision shall take place until all parties have  
34 been furnished all communications and have been afforded adequate opportunity to  
35 respond. See Rule 12D-9.032(6)(c), F.A.C.  
36
- 37 \* Under Rule 12D-9.032(6)(d), F.A.C., the Board clerk shall provide to the parties:  
38
- 39 1. Notification before the presentation of the matter to the Board; and
  - 40
  - 41 2. Notification of any action taken by the Board.  
42  
43

## 2018 Value Adjustment Board Training - Module 5

### **Further Judicial Proceedings**

Rule 12D-9.033, F.A.C., provides that after the Board issues its final decision, further proceedings and the timing thereof are as provided in Sections 194.036 and 194.171, F.S.

### **Requirements for the Record of the Hearing**

Rule 12D-9.034(1), F.A.C., states the following:

*“The board clerk shall maintain a record of the proceeding. The record shall consist of:*

- 1. The petition;*
- 2. All filed documents, including all tangible exhibits and documentary evidence presented, whether or not admitted into evidence; and*
- 3. Meeting minutes and a verbatim record of the hearing.”*

The verbatim record of the hearing may be kept by any electronic means that is easily retrieved and copied. See Rule 12D-9.034(2), F.A.C.

In counties that use special magistrates, the special magistrate shall accurately and completely preserve the verbatim record during the hearing, and may be assisted by the Board clerk. See Rule 12D-9.034(2), F.A.C.

In counties that do not use special magistrates, the Board clerk shall accurately and completely preserve the verbatim record during the hearing. See Rule 12D-9.034(2), F.A.C.

At the conclusion of each hearing, the Board clerk shall retain the verbatim record as part of the petition file. See Rule 12D-9.034(2), F.A.C.

Under Rule 12D-9.034(3) and (4), F.A.C., the Board clerk shall maintain the petition record as follows:

1. For four years after the Board rendered the final decision, if no appeal is filed in circuit court; or
2. For five years if an appeal is filed in circuit court; or
3. If requested by one of the parties, these records shall be retained until the final disposition of any subsequent judicial proceeding related to the same property.

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### **Requirements for Certification of Assessment Rolls**

When the tax rolls have been extended pursuant to Section 197.323, F.S., the initial certification of the Board shall be made on Form DR-488P. See Rule 12D-9.037(1)(a), F.A.C.

- \* Form DR-488P is available on the Department's website at the following link:  
<http://floridarevenue.com/property/Pages/Forms.aspx>

- \* Boards are required to use current and up-to-date forms.

After all hearings have been held, the Board shall certify an assessment roll or part of an assessment roll that has been finally approved pursuant to Section 193.1142, F.S. See Rule 12D-9.037(1)(b), F.A.C.

- \* The certification shall be on Form DR-488 prescribed by the Department for this purpose. See Rule 12D-9.037(1)(b), F.A.C.

- \* A sufficient number of copies of the Board's certification shall be delivered to the property appraiser who shall attach the same to each copy of each assessment roll prepared by the property appraiser. See Rule 12D-9.037(1)(b), F.A.C.

Rule 12D-9.037(2), F.A.C., requires a certification signed by the Board chair, on behalf of the entire Board, on Form DR-488, designated for this purpose, that all requirements in Chapter 194, F.S., and Department rules, were met as listed below.

1. The prehearing checklist pursuant to Rule 12D-9.014, F.A.C., was followed and all necessary actions reported by the Board clerk were taken to comply with Rule 12D-9.014, F.A.C.;
2. The qualifications of special magistrates were verified, including whether special magistrates completed the Department's training;
3. The selection of special magistrates was based solely on proper qualifications and the property appraiser and parties did not influence the selection of special magistrates;
4. All petitions considered were either timely filed, or good cause was found for late filing after proper review by the Board or its designee;
5. All Board meetings were duly noticed pursuant to Section 286.011, F.S., and were held in accordance with law;
6. No ex parte communications were considered unless all parties were notified and allowed to rebut;

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7. All petitions were reviewed and considered as required by law unless withdrawn or settled as defined in Rule Chapter 12D-9, F.A.C.;
8. All decisions contain required findings of fact and conclusions of law in compliance with Chapter 194, F.S., and Rule Chapter 12D-9, F.A.C.;
9. The Board allowed opportunity for public comment at the meeting at which special magistrate recommended decisions were considered and adopted;
10. All Board members and the Board's legal counsel have read this certification and a copy of the statement in Rule 12D-9.037(1), F.A.C., is attached; and
11. All complaints of noncompliance with Part I, Chapter 194, F.S., or Rule Chapter 12D-9, F.A.C., that were called to the Board's attention have been appropriately addressed to conform with the provisions of Part I, Chapter 194, F.S., and Rule Chapter 12D-9, F.A.C.

The Board shall provide a signed original of the certification required under Rule 12D-9.037, F.A.C., to the Department before publication of the notice of the findings and results of the Board required by Section 194.037, F.S. See Rule 12D-9.037(3), F.A.C.

- \* See Form DR-529, Notice Tax Impact of Value Adjustment Board.
- \* This form is available on the Department's website at the following link:  
<http://floridarevenue.com/property/Pages/Forms.aspx>
- \* Boards are required to use current and up-to-date forms.

### **Requirements for Public Notice of Findings and Results of the Board**

After all hearings have been completed, the Board clerk shall publish a public notice advising all taxpayers of the findings and results of the Board decisions, which shall include changes made by the Board to the property appraiser's initial roll. See Rule 12D-9.038(1), F.A.C.

- \* The format of the tax impact notice shall be substantially as prescribed in Form DR-529, Notice Tax Impact of Value Adjustment Board. See Rule 12D-9.038(1), F.A.C.
- \* The public notice shall be in the form of a newspaper advertisement and shall be referred to as the "tax impact notice." See Rule 12D-9.038(1), F.A.C.
- \* Such notice shall be published to permit filing within the timeframe in Rules 12D-17.004(1) and (2), F.A.C., where provided. See Rule 12D-9.038(1), F.A.C.
- \* For petitioned parcels, the property appraiser's initial roll shall be the property appraiser's determinations as presented at the commencement of the hearing or as

## 2018 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.

## **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
- Legal Provisions on the Real Property Appraisal Guidelines
- Florida Information on Appraisal Development
- Scope of Authority for Administrative Reviews
- The Eight Factors of Just Valuation
- Proper Consideration of the Just Valuation Factors
- Standard of Proof for Administrative Reviews
- 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
- Legal Limitations on 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
- (NEW) Homestead Residential Improvement Uninhabitable Due to Hurricane Damage
- (NEW) Assessment of Multiple Parcel Buildings

### **Learning Objectives**

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

- Identify the 2009 changes enacted in statutory law (HB 521)
- Distinguish between who does appraisal development and who does NOT
- Identify legal provisions on the Florida Real Property Appraisal Guidelines
- Identify legal provisions that represent limitations on the discretion of property appraisers
- Recognize the four components of the definition of personal property
- Distinguish between appraisal development and administrative reviews

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- Identify the effective date of administrative review and the real property interest to be reviewed
- Recognize and apply the scope of authority for administrative reviews
- Identify the items that a Board or special magistrate may consider in addition to admitted evidence
- Identify the eight factors of just valuation in Section 193.011, F.S.
- Recognize the legal standards for consideration of the just valuation factors
- Identify the applicable standard of proof, its definition, and how it is applied
- Identify standards of proof that do NOT apply in administrative reviews
- Recognize that a petitioner is NOT required to present an opinion of value
- Understand the order of presentation of evidence
- Identify and apply the steps for evaluating evidence in administrative reviews
- Recognize and apply the provisions for ruling on the admissibility of evidence
- Identify and apply the definitions of relevant evidence and credible evidence
- Recognize and apply the standards for determining the sufficiency of evidence
- Identify types of information that are NOT sufficient evidence for establishing a presumption of correctness
- Recognize the requirements for establishing a presumption of correctness
- Recognize the requirements for overcoming a presumption of correctness
- Identify the alternative actions required when a presumption of correctness was not established, or was established but later was overcome
- Identify and apply the elements of the definition of competent substantial evidence for establishing a revised assessment
- Recognize the conditions under which a Board or special magistrate is required to establish a revised just value
- Identify legal limitations on administrative reviews
- Apply the sequence of general procedural steps for administrative reviews of just valuations
- Identify when the Board or special magistrate is required or is NOT required to make determinations such as findings, conclusions, or decisions
- Recognize the chronology and operation of the eighth criterion for real property under Florida law
- Recognize that the eighth criterion must be properly considered in administrative reviews of just valuations of real property, regardless of the appraisal approach or technique used and whether an actual sale of the property has occurred
- Apply procedures for properly considering the eighth criterion in administrative reviews of real property

### **Statutory Law Beginning in 2009 (See HB 521)**

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, Florida Statutes, as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

The complete text of this legislation is presented following:



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1 *Be It Enacted by the Legislature of the State of Florida:*

2  
3 Section 1.

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

5 *194.301 Challenge to ad valorem tax assessment.—*

6  
7 *(1) In any administrative or judicial action in which a taxpayer challenges an ad valorem*  
8 *tax assessment of value, the property appraiser's assessment is presumed correct if the*  
9 *appraiser proves by a preponderance of the evidence that the assessment was arrived*  
10 *at by complying with s. 193.011, any other applicable statutory requirements relating to*  
11 *classified use values or assessment caps, and professionally accepted appraisal*  
12 *practices, including mass appraisal standards, if appropriate. However, a taxpayer who*  
13 *challenges an assessment is entitled to a determination by the value adjustment board*  
14 *or court of the appropriateness of the appraisal methodology used in making the*  
15 *assessment. The value of property must be determined by an appraisal methodology that*  
16 *complies with the criteria of s. 193.011 and professionally accepted appraisal practices.*  
17 *The provisions of this subsection preempt any prior case law that is inconsistent with this*  
18 *subsection.*

19  
20 *(2) In an administrative or judicial action in which an ad valorem tax assessment is*  
21 *challenged, the burden of proof is on the party initiating the challenge.*

22  
23 *(a) If the challenge is to the assessed value of the property, the party initiating the*  
24 *challenge has the burden of proving by a preponderance of the evidence that the*  
25 *assessed value:*

26  
27 *1. Does not represent the just value of the property after taking into account any*  
28 *applicable limits on annual increases in the value of the property;*

29  
30 *2. Does not represent the classified use value or fractional value of the property if the*  
31 *property is required to be assessed based on its character or use; or*

32  
33 *3. Is arbitrarily based on appraisal practices that are different from the appraisal practices*  
34 *generally applied by the property appraiser to comparable property within the same*  
35 *county.*

36  
37 *(b) If the party challenging the assessment satisfies the requirements of paragraph (a),*  
38 *the presumption provided in subsection (1) is overcome and the value adjustment board*  
39 *or the court shall establish the assessment if there is competent, substantial evidence of*  
40 *value in the record which cumulatively meets the criteria of s. 193.011 and professionally*  
41 *accepted appraisal practices. If the record lacks such evidence, the matter must be*  
42 *remanded to the property appraiser with appropriate directions from the value adjustment*  
43 *board or the court, and the property appraiser must comply with those directions.*

44  
45 *(c) If the revised assessment following remand is challenged, the procedures described*  
46 *in this section apply.*

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

### Section 2.

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

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

### Section 3.

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

Approved by the Governor June 4, 2009.

Filed in Office Secretary of State June 4, 2009.

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

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

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

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

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

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

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

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

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

5  
6 Higher standards of proof no longer apply. The higher standard of proof called “clear  
7 and convincing evidence” no longer applies in the administrative review of assessments  
8 and must not be used by Boards or special magistrates. See Section 194.301, F.S., as  
9 amended by Chapter 2009-121, Laws of Florida (House Bill 521).

10  
11 *“It is the express intent of the Legislature that a taxpayer shall never have the burden of*  
12 *proving that the property appraiser's assessment is not supported by any reasonable*  
13 *hypothesis of a legal assessment.”* See Subsection 194.3015(1), F.S., as created by Chapter  
14 2009-121, Laws of Florida (House Bill 521).

15  
16 The current statute provides the following: *“The provisions of this subsection preempt*  
17 *any prior case law that is inconsistent with this subsection.”* See Subsection 194.301(1),  
18 F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

19  
20 References to Florida court decisions are presented in this training. Generally, these  
21 court decisions predate this current statutory law. This current statutory law supersedes  
22 these decisions to the extent these decisions conflict with it.

23  
24 Thus, the information from these court decisions, as presented in this training, has been  
25 modified where appropriate for consistency with the 2009 changes in the statute.

26  
27 For example, court decisions recognize that property appraisers have discretion, which  
28 is limited by other provisions of law, in weighing just valuation factors and in selecting  
29 an appraisal methodology.

30  
31 \* The current statute contains an additional requirement that the appraisal  
32 methodology used in making the assessment must comply with “professionally  
33 accepted appraisal practices.”

34  
35 \* This requirement represents an additional statutory limitation on the property  
36 appraiser’s discretion.

37  
38 Therefore, where appropriate in this training, the requirement on “professionally  
39 accepted appraisal practices” has been added to modify the information from prior court  
40 decisions for consistency with the current statutory law.

41  
42 \* This training module includes references to this current statutory law where  
43 appropriate.

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

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

### **Overview of Appraisal Development**

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

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

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

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

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

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

### **Legal Provisions on the Real Property Appraisal Guidelines**

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

1. *"The standard measures of value shall provide guidelines for the valuation of property and methods for property appraisers to employ in arriving at the just valuation of particular types of property consistent with section 193.011..."*
2. *"The standard measures of value shall assist the property appraiser in the valuation of property and be deemed prima facie correct, but shall not be deemed to establish the just value of any property."*

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

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### **Florida Information on Appraisal Development**

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

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

A copy of these guidelines is available at the following web address:

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

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

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

Florida's constitution has "delegated to the Legislature the responsibility for deciding the specifics of how that 'just valuation' would be secured." Sunset Harbour Condominium Ass'n v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Collier County v. State, 733 So.2d 1012, 1019 (Fla. 1999).

In section 193.011, F.S., the Florida Legislature has effectuated the constitutional requirement for just valuation by specifying the eight factors that must be properly considered in arriving at just valuations of all property.

In 1963, the Legislature enacted the first seven just valuation factors, effective January 1, 1964. See Chapter 63-250, Laws of Florida, creating Section 193.021, F.S., which was re-numbered in 1969 as Section 193.011, F.S., by Chapter 69-55, Laws of Florida.

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

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

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

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

5  
6 Subsection 193.011(8), F.S., generally known as the “eighth criterion,” was last  
7 amended in 1979 and is presented below in its entirety.

8  
9 *“The net proceeds of the sale of the property, as received by the seller, after deduction*  
10 *of all of the usual and reasonable fees and costs of the sale, including the costs and*  
11 *expenses of financing, and allowance for unconventional or atypical terms of financing*  
12 *arrangements. When the net proceeds of the sale of any property are utilized, directly or*  
13 *indirectly, in the determination of just valuation of realty of the sold parcel or any other*  
14 *parcel under the provisions of this section, the property appraiser, for the purposes of*  
15 *such determination, shall exclude any portion of such net proceeds attributable to*  
16 *payments for household furnishings or other items of personal property.”*

17  
18 When the eighth criterion was added in 1967 to the statute containing just valuation  
19 factors, the Legislature apparently provided discretion to property appraisers that would  
20 allow for, but not require, just value to be a number different than before enactment of  
21 the “net proceeds of sale” factor.

22  
23 The rule of statutory interpretation is to assume that the Legislature intended its  
24 amendment to serve a useful purpose. “Likewise, when a statute is amended, it is  
25 presumed that the Legislature intended it to have a meaning different from that  
26 accorded to it before the amendment.” Carlisle v. Game and Freshwater Fish Commission,  
27 354 So.2d 362 (Fla. 1977); see also Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st  
28 DCA 1998).

29  
30 For many years, Florida property appraisers have interpreted subsection 193.011(8),  
31 F.S., by applying across-the-board, eighth criterion adjustments in arriving at just  
32 valuations of real property.

33  
34 Since its enactment and amendments, this eighth just valuation criterion has been  
35 applied by property appraisers in actual practice to produce a just value for real property  
36 that is generally less than fair market value.

37  
38 In 1984, when reviewing a 1980 assessment, a federal appellate court found that just  
39 value as determined under Subsection 193.011(8), F.S., does not represent full market  
40 value. See Louisville and Nashville Railroad Co. v. Department of Revenue, State of Fla., 736  
41 F.2d 1495 (11th Cir.(Fla.) July 24, 1984).

42  
43 A Florida appellate court stated the following in an example regarding the eighth  
44 criterion: “*Subtracting the \$15,000 (cost of sale) from the \$100,000 selling price leaves*  
45 *a net value of \$85,000. We find no impropriety in using this approach to valuation.” See*

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1 Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272 (Fla. 4th DCA  
2 1995) review denied 673 So.2d 30 (Fla. 1996).

3  
4 The eighth criterion is addressed in more detail in the last three sections of this module.

5  
6 Appraisal is an art, not a science. See Powell v. Kelly, 223 So.2d 305 (Fla. 1969).

7  
8 The determination of just value inherently and necessarily requires the exercise of  
9 appraisal judgment by the property appraiser. See Department of Revenue v. Howard, 916  
10 So.2d 640 (Fla. 2005).

11  
12 \* Note: However, as indicated following, the property appraiser's discretion is not  
13 unbridled and is limited by several other provisions of law including Sections  
14 194.301 and 194.3015, F.S., as amended by Chapter 2009-121, Laws of Florida  
15 (House Bill 521).

16  
17 Several Florida court decisions have described the limitations on the property  
18 appraiser's discretion, including the four indicated below:

- 19  
20 1. The statute on just valuation factors (now Section 193.011, F.S.) was not intended to  
21 give property appraisers unbridled discretion; rather, the statute's purpose is to  
22 require property appraisers to adhere to the constitutional mandate of just valuation.  
23 See Walter v. Schuler, 176 So.2d 81 (Fla. 1965); Section 193.011, F.S.; and Chapter 67-167,  
24 Laws of Florida, creating Subsection 193.021(8), F.S., which was re-numbered in 1969 as  
25 Subsection 193.011(8), F.S., by Chapter 69-55, Laws of Florida.  
26  
27 2. The property appraiser's discretion is limited by the standard of just valuation and by  
28 the statutory criteria for just valuation (now Section 193.011, F.S.). See Keith  
29 Investments, Inc. v. James, 220 So.2d 695 (Fla. 4th DCA 1969).  
30  
31 3. The statutory valuation criteria are intended to limit the property appraiser's  
32 discretion and to tie the property appraiser more closely to the uniform constitutional  
33 standard of just valuation. See Cassady v. McKinney, 296 So.2d 94 (Fla. 2nd DCA 1974).  
34  
35 4. The property appraiser's discretion is limited by the constitutional requirement for a  
36 just valuation and by statute (Section 193.011, F.S.). See In re Steffen, 342 B.R. 861  
37 (Bkrtcy. M.D. Fla. 2006). Also, see Section 194.301, F.S., as amended by Chapter 2009-121,  
38 Laws of Florida (House Bill 521), which requires that the assessment methodology comply  
39 with professionally accepted appraisal practices.  
40

41 The property appraiser is required to consider, but is not required to use, all three  
42 approaches to value. See Mastroianni v. Barnett Banks, Inc., 664 So.2d 284 (Fla. 1st DCA  
43 1995) review denied 673 So.2d 29 (Fla. 1996).

44  
45 \* Note: However, a presumption of correctness for the assessment will not be  
46 established if the property appraiser does not prove by a preponderance of the

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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 just value of any personal property must be excluded from just valuations of real property.

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

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

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

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

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

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



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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),  
42 stating that when the record contains competent substantial evidence of value the court may  
43 make necessary value calculations or adjustments based on such evidence.

44  
45 If the hearing record does not contain competent substantial evidence of just value, the  
46 Board or special magistrate cannot substitute its own independent judgment. See Section  
47 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see

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1 Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977), stating that in the absence of  
2 competent substantial evidence of value the court cannot substitute its own independent  
3 judgment.

4  
5 The Board or special magistrate has no authority to adjust assessments across-the-  
6 board. Their authority to review just valuations is limited to the review of individual  
7 petitions filed. See Spooner v. Askew, 345 So.2d 1055 (Fla. 1976).

8  
9 The Board has the limited function of reviewing and correcting individual assessments  
10 developed by the property appraiser. See Bath Club, Inc. v. Dade County, 394 So.2d 110  
11 (Fla. 1981).

12  
13 The Board has no authority to review, on its own volition, a decision of the property  
14 appraiser to deny an exemption. See Redford v. Department of Revenue, 478 So.2d 808  
15 (Fla. 1985).

16  
17 *“For the purposes of review of a petition, the board may consider assessments among*  
18 *comparable properties within homogeneous areas or neighborhoods.”* See Subsection  
19 194.034(5), F.S.

20  
21 In administrative reviews, Boards and special magistrates are not authorized to consider  
22 any evidence except evidence properly presented by the parties and properly admitted  
23 into the record for consideration. See Rule 12D-9.025(4)(a), F.A.C.

24  
25 In addition to admitted evidence, Boards and special magistrates are authorized to  
26 consider only the following items in administrative reviews:

- 27  
28 1. Legal advice from the Board legal counsel;  
29  
30 2. Information contained or referenced in the Department’s Uniform Policies and  
31 Procedures Manual and Accompanying Documents;  
32  
33 3. Information contained or referenced in the Department’s training for value  
34 adjustment boards and special magistrates; and  
35  
36 4. Professional texts that pertain only to professionally accepted appraisal practices  
37 that are not inconsistent with Florida law.  
38  
39

### **The Eight Factors of Just Valuation**

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

42 *“Factors to consider in deriving just valuation. – In arriving at just valuation as*  
43 *required under s. 4, Art. VII of the State Constitution, the property appraiser shall take*  
44 *into consideration the following factors:*  
45

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

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

18 (3) *The location of said property;*  
19

20 (4) *The quantity or size of said property;*  
21

22 (5) *The cost of said property and the present replacement value of any improvements*  
23 *thereon;*  
24

25 (6) *The condition of said property;*  
26

27 (7) *The income from said property; and*  
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 a typical terms of*  
32 *financing arrangements. When the net proceeds of the sale of any property are utilized,*  
33 *directly or indirectly, in the determination of just valuation of realty of the sold parcel or*  
34 *any other parcel under the provisions of this section, the property appraiser, for the*  
35 *purposes of such determination, shall exclude any portion of such net proceeds*  
36 *attributable to payments for household furnishings or other items of personal property."*  
37

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

38 Section 193.011, Florida Statutes, states that property appraisers must consider the  
39 factors of just valuation.  
40

41  
42 Florida court decisions have used the terms *lawfully*, *properly*, *duly*, and *carefully* to  
43 describe the standard of care required of property appraisers in considering each of the  
44 eight factors.  
45

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- 1 \* For example, one court decision used the terms *lawfully* and *properly* to describe the  
2 property appraiser's standard of care. See Mazourek v. Wal-Mart Stores, 831 So.2d 85  
3 (Fla. 2002).  
4
- 5 \* Another court decision used the term *duly* to describe the property appraiser's  
6 standard of care. See Atlantic International Investment Corp. v. Turner, 383 So.2d 919  
7 (Fla. 5th DCA 1980).  
8
- 9 \* Other court decisions and the Florida Attorney General have used the terms  
10 *carefully* and *careful* to describe the property appraiser's standard of care for  
11 considering each of the eight factors.  
12
- 13 \* The property appraiser is required to *carefully* consider each factor and give each  
14 factor the weight justified by the facts, but is not required to give each factor equal  
15 weight. See Lanier v. Walt Disney World Co., 316 So.2d 59 (Fla. 4th DCA 1975), and  
16 Daniel v. Canterbury Towers, Inc., 462 So.2d 497 (Fla. 2nd DCA 1985). Also, see Florida  
17 Attorney General's Opinion [AGO 77-106](#), September 29, 1977.  
18
- 19 \* "*Just value is to be determined by giving careful consideration to each of the factors*  
20 *contained in s. 193.011 and by giving such weight to a factor as a particular factual*  
21 *situation may justify.*" See Florida Attorney General's Opinion [AGO 77-106](#), September  
22 29, 1977.  
23

24 After lawfully considering the factors, the property appraiser may discard entirely any  
25 factor that is not probative (indicative) of just value under the circumstances, as long as  
26 the appraisal methodology used complies with professionally accepted appraisal  
27 practices. See Mazourek v. Wal-Mart Stores, 831 So.2d 85 (Fla. 2002), and Section 194.301,  
28 F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). Also, see In re  
29 Steffen, 342 B.R. 861 (Bkrtcy. M.D. Fla. 2006).  
30

31 However, the property appraiser cannot simply "out of hand" reject, without careful  
32 consideration, a just valuation factor as being inappropriate in a particular case. See  
33 Daniel v. Canterbury Towers, Inc., 462 So.2d 497 (Fla. 2nd DCA 1985).  
34

35 In administrative reviews, the property appraiser is responsible for proving by a  
36 preponderance of the evidence that he or she complied with Section 193.011, F.S., by  
37 properly considering each of the eight factors in developing original just valuations. See  
38 Subsection 194.301(1), F.S.  
39

40 If the property appraiser does not prove by a preponderance of the evidence that he or  
41 she properly considered each of the eight factors in developing the just value  
42 assessment, the Board or special magistrate must conclude that the property appraiser  
43 did not establish a presumption of correctness for the assessment. See Subsection  
44 194.301(1), F.S.  
45  
46

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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).

### **Petitioner Not Required to Present Opinion or Estimate of Value**

The petitioner is not required to provide an opinion or estimate of just value.

No provision of law requires the petitioner to present an opinion or estimate of value.

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The Board or special magistrate is not authorized to require a petitioner to provide an opinion or estimate of just value.

The petitioner has the option of choosing whether to present an opinion or estimate of just value.

### **Presentation of Evidence by the Parties**

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

Under Subsection 194.301(1), F.S., in a hearing on just value, the first issue to be considered is whether the property appraiser establishes a presumption of correctness.

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

\* While the property appraiser is required to present evidence on this issue first, the Board or special magistrate must allow the petitioner a chance to present evidence on this issue before deciding whether the presumption of correctness is established.

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

If the property appraiser establishes a presumption of correctness by proving by a preponderance of the evidence that the just value assessment was arrived at by complying with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the petitioner must prove by a preponderance of the evidence that:

1. The property appraiser's just valuation does not represent just value; or
2. The property appraiser's just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

However, if the property appraiser does not establish a presumption of correctness because he or she did not prove by a preponderance of the evidence that the just valuation was arrived at by complying with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the Board or special magistrate must take one of the two following actions:

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1. If the record contains competent substantial evidence of just value that cumulatively meets the requirements of Section 193.011, F.S., and professionally accepted appraisal practices, the Board or special magistrate must establish a revised just value; or
2. If the record lacks such competent substantial evidence, the Board or special magistrate must remand the assessment to the property appraiser with appropriate directions with which the property appraiser must comply.

### **Evaluation of Evidence by the Board or Special Magistrate**

Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special magistrate must:

1. Review the evidence presented by the parties;
2. Determine whether the evidence presented is admissible;
3. Admit the evidence that is admissible;
4. Identify the evidence presented to indicate that it is admitted or not admitted; and
5. Consider the admitted evidence.

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

*“No evidence shall be considered by the board or special magistrate except when presented and admitted during the time scheduled for the petitioner’s hearing, or at a time when the petitioner has been given reasonable notice.”* See Rule 12D-9.025(4)(a), F.A.C.

*“If a party submits evidence to the board clerk prior to the hearing, the board or special magistrate shall not review or consider such evidence prior to the hearing.”* See Rule 12D-9.025(4)(b), F.A.C.

Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:

1. *“As the trier of fact, the board or special magistrate may independently rule on the admissibility and use of evidence.”*
2. *“If the board or special magistrate has any questions relating to the admissibility and use of evidence, the board or special magistrate should consult with the board legal counsel.”*

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3. *“The basis for any ruling on admissibility of evidence must be reflected in the record.”*

4. *“The special magistrate may delay ruling on the question during the hearing and consult with board legal counsel after the hearing.”*

The Board or special magistrate shall consider the admitted evidence. See Rule 12D-9.025(1)(d), F.A.C.

A property owner generally is qualified, on account of ownership, to testify regarding the just value of his or her property. See In re Steffen, 342 B.R. 861 (Bkrtcy. M.D. Fla. 2006).

NOTE: More information on the admissibility of evidence is presented in Module 4 of this training.

### **Sufficiency of Evidence**

When applied to evidence, the term “sufficient” is a test of adequacy. See Rule 12D-9.027(6), F.A.C.

Sufficient evidence is admitted evidence that has enough overall weight, in terms of relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6), F.A.C.

The Florida Supreme Court stated the following regarding sufficient evidence: *“Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character, weight, or amount, as will legally justify the judicial or official action demanded.”* See Tibbs v. State, 397 So.2d 1120 (Fla. 1981). Also, see Moore v. State, 800 So.2d 747 (Fla. 5th DCA 2001).

A particular conclusion is justified when the overall weight of the admitted evidence meets the standard of proof that applies to the issue under consideration. See Rule 12D-9.027(6), F.A.C.

The Board or special magistrate must consider the admitted evidence and determine whether it is sufficiently relevant and credible to reach the “preponderance of the evidence” standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-9.027(5), and 12D-9.027(6), F.A.C.

Rule 12D-9.027(6), F.A.C., states the following in pertinent part: *“In determining whether the admitted evidence is sufficient for a particular issue under consideration, the board or special magistrate shall:*

(a) *Consider the relevance and credibility of the admitted evidence as a whole, regardless of which party presented the evidence;*



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- 1 (b) *Determine the relevance and credibility, or overall weight, of the evidence;*
- 2
- 3 (c) *Compare the overall weight of the evidence to the standard of proof;*
- 4
- 5 (d) *Determine whether the overall weight of the evidence is sufficient to reach the*
- 6 *standard of proof; and*
- 7
- 8 (e) *Produce a conclusion of law based on the determination of whether the overall*
- 9 *weight of the evidence has reached the standard of proof.”*

10  
11 For administrative reviews of just valuations, “relevant evidence” is evidence that is  
12 reasonably related, directly or indirectly, to the statutory criteria that apply to the just  
13 valuation of the petitioned property. See Rule 12D-9.025(2)(b), F.A.C.

14  
15 \* This description means the evidence meets or exceeds a minimum level of  
16 relevance necessary to be admitted for consideration, but does not necessarily  
17 mean that the evidence has sufficient relevance to legally justify a particular  
18 conclusion. See Rule 12D-9.025(2)(b), F.A.C.

19  
20 In evaluating the relevance of evidence, the Board or special magistrate must consider,  
21 as of the January 1 assessment date, how well the evidence relates to the petitioned  
22 property and to the statutory criteria found in Section 193.011, F.S., and in Section  
23 194.301, F.S.

24  
25 For administrative reviews of just valuations, “credible evidence” means evidence that is  
26 worthy of belief (believable). See *Black’s Law Dictionary, Eighth Edition*, page 596.

27  
28 NOTE: More information on evaluating the relevance and credibility of evidence is  
29 presented in Module 11 of this training.

30  
31 By itself, the property record card is not sufficient evidence for establishing a  
32 presumption of correctness for the assessment under Subsection 194.301(1), F.S.

33  
34 Materials describing the general appraisal practices of the property appraiser alone,  
35 without discussing how those practices were applied to the assessment at issue, are not  
36 sufficient to establish a presumption of correctness for the assessment. See Property Tax  
37 Informational Bulletin PTO 09-29.

38  
39 The approval of an assessment roll by the Department of Revenue is not evidence that  
40 a particular assessment was made in compliance with statutory requirements and is not  
41 sufficient to establish a presumption of correctness for the assessment. See Property Tax  
42 Informational Bulletin PTO 09-29.

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### **Requirements for Establishing a Presumption of Correctness**

A presumption of correctness for the assessment is not established unless the property appraiser proves by a preponderance of the evidence that the property appraiser's just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. See Rule 12D-9.027(2)(a), F.A.C.

A presumption of correctness for the assessment is established only when the property appraiser proves by a preponderance of the evidence that the property appraiser's just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

### **Requirements for Overcoming a Presumption of Correctness**

If the property appraiser establishes a presumption of correctness, the petitioner can overcome the presumption of correctness by proving by a preponderance of the evidence one of the following:

1. The property appraiser's just valuation does not represent just value; or
2. The property appraiser's just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

If the property appraiser establishes a presumption of correctness and the petitioner does not overcome the presumption of correctness as described above, the assessment stands.

### **Establishing a Revised Just Value or Remanding the Assessment**

If the property appraiser does not establish a presumption of correctness for the assessment, or if the petitioner overcomes the presumption of correctness, the Board or special magistrate must take one of the two following actions:

1. If the record contains competent substantial evidence of just value that cumulatively meets the requirements of Section 193.011, F.S., and professionally accepted appraisal practices, the Board or special magistrate must establish a revised just value; or
2. If the record lacks such competent substantial evidence, the Board or special magistrate must remand the assessment to the property appraiser with appropriate directions with which the property appraiser must comply.

NOTE: Information on the procedural requirements for remanded assessments is presented in Module 5 of this training.

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### **Competent Substantial Evidence for Establishing a Revised Just Value**

Competent substantial evidence for establishing a revised just value, as part of an administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:

1. Cumulatively meets the criteria of Section 193.011, F.S., and professionally accepted appraisal practices;
2. Tends to prove (is probative of) just value as of January 1 of the assessment year under review;
3. Is sufficiently relevant and credible to be accepted as adequate to support (legally justify) the conclusion reached; and
4. Otherwise meets all requirements of law.

### **Establishment of Revised Just Values in Administrative Reviews**

The Board or special magistrate is required to establish a revised just value under either of the two following conditions:

1. The property appraiser does not establish a presumption of correctness for the assessment and the hearing record contains competent substantial evidence for establishing a revised just value as described above; or
2. The petitioner overcomes a presumption of correctness established by the property appraiser and the hearing record contains competent substantial evidence for establishing a revised just value as described above.

Within their scope of authority, the Board or special magistrate shall establish a revised just value based upon the competent substantial evidence for establishing a revised just value. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

Prior to 2009 and the adoption of House Bill 521, Section 194.301, F.S., provided that the Board may establish the assessment when authorized.

However, the current statute, effective for administrative reviews beginning in 2009, specifically requires that the Board shall establish the just value when authorized by law. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

*"In establishing a revised just value, the board or special magistrate is not restricted to any specific value offered by one of the parties."* See Rule 12D-9.027(2)(b)3.a., F.A.C.

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1  
2 In establishing a revised just value when required by law, Boards and special  
3 magistrates are not required, and are not authorized, to complete an independent  
4 valuation approach.

5  
6 The establishment of a revised just value does not require the evidence necessary to  
7 complete an independent valuation approach.

8  
9 The establishment of a revised just value only requires enough evidence to legally  
10 justify making an adjustment to the property appraiser's original just valuation.

11  
12 In establishing a revised just value when required by law, Boards and special  
13 magistrates are authorized to make the necessary calculations.

### 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 A just valuation challenge must stand or fall on its own validity, unconnected with the  
35 just value of any prior or subsequent year. See Keith Investments, Inc. v. James, 220 So.2d  
36 695 (Fla. 4th DCA 1969); Also, see Dade County v. Tropical Park, Inc., 251 So.2d 551 (Fla. 3rd  
37 DCA 1971).

38  
39 The prior year's just value is not competent evidence of just value in the current year,  
40 even when there is no evidence showing a change in circumstances between the two  
41 dates of assessment. See Simpson v. Merrill, 234 So.2d 350 (Fla. 1970).

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### **Sequence of General Procedural Steps**

This section sets forth below a sequence of general procedural steps for Boards and special magistrates to follow in administrative reviews of just valuations in order to fulfill the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.

This sequence of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

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

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

In following this sequence of steps, Boards or special magistrates must also meet the requirements of Rule 12D-9.025(1), F.A.C., which are the following:

- \* Review the evidence presented by the parties;
- \* Determine whether the evidence presented is admissible;
- \* Admit the evidence that is admissible; and
- \* Identify the evidence presented to indicate that it is admitted or not admitted.

The sequence of general procedural steps presented below is based on Rule 12D-9.027(2), F.A.C. The sequence of general procedural steps is as follows.

1. Consider the admitted evidence presented by the parties.
2. Identify and consider the essential characteristics of the petitioned property based on the admitted evidence and the factors in Section 193.011, F.S.
3. Identify the appraisal methodology used by the property appraiser in developing his or her just valuation of the petitioned property, and consider this appraisal methodology in light of the essential characteristics of the petitioned property.
4. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser’s methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

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- 1 5. Determine whether the property appraiser's appraisal methodology is appropriate  
2 and whether the property appraiser established a presumption of correctness for the  
3 assessment.  
4
  - 5 a) The property appraiser's just valuation methodology is not appropriate and a  
6 presumption of correctness is not established unless the admitted evidence  
7 proves by a preponderance of the evidence that the property appraiser's just  
8 valuation methodology complies with Section 193.011, F.S., and professionally  
9 accepted appraisal practices, including mass appraisal standards, if appropriate.  
10
  - 11 b) The property appraiser's just valuation methodology is appropriate and the  
12 presumption of correctness is established only when the admitted evidence  
13 proves by a preponderance of the evidence that the property appraiser's just  
14 valuation methodology complies with Section 193.011, F.S., and professionally  
15 accepted appraisal practices, including mass appraisal standards, if appropriate.  
16
- 17 6. If the Board or special magistrate determines that a presumption of correctness is  
18 established, the Board or special magistrate must then determine whether the  
19 admitted evidence proves by a preponderance of the evidence that:  
20
  - 21 a) The property appraiser's just valuation does not represent just value; or  
22
  - 23 b) The property appraiser's just valuation is arbitrarily based on appraisal practices  
24 that are different from the appraisal practices generally applied by the property  
25 appraiser to comparable property within the same county. In making this  
26 determination, the Board or special magistrate may consider any admitted  
27 evidence regarding assessments among comparable properties within  
28 homogeneous areas or neighborhoods.  
29
- 30 7. If the Board or special magistrate determines that one or both of the conditions  
31 specified under Step 6 exist, the presumption of correctness is overcome.  
32
- 33 8. If the property appraiser does not establish a presumption of correctness, or if the  
34 presumption of correctness is overcome, the Board or special magistrate must  
35 determine whether the hearing record contains competent, substantial evidence of  
36 just value which cumulatively meets the criteria of Section 193.011, F.S., and  
37 professionally accepted appraisal practices.  
38
  - 39 a) If the hearing record contains competent, substantial evidence for establishing a  
40 revised just value, the Board or an appraiser special magistrate must establish a  
41 revised just value based only upon such evidence. In establishing a revised just  
42 value, the Board or special magistrate is not restricted to any specific value  
43 offered by one of the parties.  
44
  - 45 b) If the hearing record lacks competent, substantial evidence for establishing a  
46 revised just value, the Board or special magistrate must remand the assessment

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to the property appraiser with appropriate directions for establishing just value.  
The property appraiser is required to follow these directions.

9. If the property appraiser establishes a presumption of correctness as described in Step 5 above and that presumption of correctness is not overcome as described in Step 6 above, the assessment stands.

### **Chronological Overview of Subsection 193.011(8), F.S.**

In 1963, the first seven just valuation factors were enacted, effective January 1, 1964. See Chapter 63-250, Laws of Florida, creating Section 193.021, F.S., which was re-numbered in 1969 as Section 193.011, F.S., by Chapter 69-55, Laws of Florida.

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

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

Then, in 1967, the Legislature enacted the first part of the eighth criterion as subsection 193.021(8), F.S., in the form presented below. See 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.

*(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing.*

In 1977, the language underlined below was added to subsection 193.011(8), F.S. See 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.

*(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements.*

In 1979, the language underlined below was added to subsection 193.011(8), F.S. See Chapter 79-334, Laws of Florida.

*(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms*

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1 *of financing arrangements. When the net proceeds of the sale of any property are*  
2 *utilized, directly or indirectly, in the determination of just valuation of realty of the*  
3 *sold parcel or any other parcel under the provisions of this section, the property*  
4 *appraiser, for the purposes of such determination, shall exclude any portion of such*  
5 *net proceeds attributable to payments for household furnishings or other items of*  
6 *personal property.*

7  
8 Through 2018, no further amendments have been made to subsection 193.011(8), F.S.

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 In 1982, the Legislature enacted subsection 192.001(18), F.S. See Chapter 82-388, Laws  
16 of Florida.

17  
18 \* This statute provides minimum reporting standards for a property appraiser's  
19 complete submission of an assessment roll to the Department of Revenue. These  
20 standards include the following for adjustments made by the property appraiser  
21 under subsection 193.011(8), F.S:

22  
23 *"(18) 'Complete submission of the roll' includes, but is not necessarily limited*  
24 *to, ...an accurate tabular summary by property class of any adjustments made to*  
25 *recorded selling prices or fair market value in arriving at assessed value, as*  
26 *prescribed by department rule;..." (underlined emphasis added).*

27  
28 Rule 12D-8.002(4), F.A.C., which implements subsection 192.001(18), F.S., was  
29 adopted effective September 30, 1982.

30  
31 \* Rule 12D-8.002(4), F.A.C., provides the following requirement for submittals of  
32 preliminary assessment rolls to the Department:

33  
34 *"(4) Accompanying the assessment roll submitted to the Executive Director shall be,*  
35 *on a form provided by the Department, an accurate tabular summary by property*  
36 *class of any adjustments made to recorded selling prices or fair market value in*  
37 *arriving at assessed value. Complete, clear, and accurate documentation for each*  
38 *adjustment under section 193.011(8), F.S., exceeding fifteen percent shall*  
39 *accompany this summary detailing how that percentage adjustment was calculated.*  
40 *This documentation shall include individual data for all sales used and a narrative on*  
41 *the procedures used in the study." (underlined emphasis added)*

42  
43 It is important to note that this rule does not, in any way, indicate that property  
44 appraisers are required to apply any particular eighth criterion adjustment. Though not  
45 required by law, in their actual practice, property appraisers do make across-the-board,  
46 eighth criterion adjustments in arriving at their annual just values of real property.



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\* The statement in the rule regarding 15 percent is merely a reporting threshold that, if exceeded, would require a documented research study to justify the reported adjustment.

To facilitate annual reporting of eighth criterion adjustments in accordance with subsection 192.001(18), F.S., and Rule 12D-8.002(4), F.A.C., the Department of Revenue developed Form DR-493 for each property appraiser to use.

\* Each year, using Form DR-493, property appraisers are required to report to the Department the adjustments made by the property appraiser to recorded selling prices or fair market value for each parcel within each of the 18 real property use code groups listed on the form.

\* The Forms DR-493 that are completed and certified annually by each Property Appraiser are available by clicking on "Assessment Roll Evaluation and Approval" at the following link:

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

### **Operation of the Eighth Criterion Under Florida Law**

Subsection 193.011(8), F.S., requires proper consideration of the "net proceeds of sale," regardless of whether an actual sale of the property has occurred. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

\* However, the statute does not require the property appraiser to select the value generated by the application of Subsection 193.011(8), F.S., and apply it in a blanket fashion to all assessments. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

There is no legal requirement that the net proceeds of sale constitute the deciding factor in just valuation. See In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006).

The use of net sales price alone, without considering and weighing the other factors, is legally insufficient to constitute compliance with the mandate of Section 193.011, F.S. See Florida Attorney General's Opinion [AGO 77-106](#), September 29, 1977.

At least two court decisions have approved an adjustment for the eighth criterion in just valuations. See Roden v. GAC Liquidating Trust, 462 So.2d 92 (Fla. 2nd DCA 1985). Also, see Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272 (Fla. 4th DCA 1995) review denied 673 So.2d 30 (Fla. 1996), stating the following in an example: *"Subtracting the \$15,000 (cost of sale) from the \$100,000 selling price leaves a net value of \$85,000. We find no impropriety in using this approach to valuation."*

Under Florida law, property appraisers are authorized, but are not required, to make eighth criterion adjustments in real property just valuations.

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\* Though not required by law, in arriving at their annual just values property appraisers make across-the-board adjustments to recorded selling prices or fair market value of real property to reflect their consideration of subsection 193.011(8), F.S. See Department of Revenue Form DR-493 reported each year.

At least two court decisions have noted the practice of making across-the-board adjustments to real property for the eighth criterion. See Louisville and Nashville Railroad Co. v. Department of Revenue, State of Fla., 736 F.2d 1495 (11<sup>th</sup> Cir.(Fla.) July 24, 1984), and Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272 (Fla. 4th DCA 1995) review denied 673 So.2d 30 (Fla. 1996).

Each year, property appraisers are required to lawfully report to the Department of Revenue the lawful adjustments the property appraiser made to recorded selling prices or fair market value of real property in consideration of subsection 193.011(8), F.S. See Subsection 192.001(18), F.S.; Rule 12D-8.002(4), F.A.C.; and Form DR-493 reported each year.

Property appraisers report these adjustments using Form DR-493, and are required to report the adjustments made to recorded selling prices or fair market values within each of the real property use code groups listed on the form.

\* The property appraiser lawfully making and reporting these adjustments is a professionally accepted appraisal practice under section 194.301, F.S.

\* See Forms DR-493 that are certified and reported by property appraisers each year, available by clicking on "Assessment Roll Evaluation and Approval" at the following link:

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

The property appraiser is responsible for lawfully determining whether adjustments for the eighth factor are necessary for just valuation and is responsible for lawfully determining and reporting the amount of the adjustments made.

The Department of Revenue does not determine whether the property appraiser should make adjustments in consideration of subsection 193.011(8), F.S., and does not determine the amount of any lawful adjustments made by the property appraiser.

The Department administers a reporting threshold that requires justifying research, data, analysis, and documentation from the property appraiser under certain conditions. See Rule 12D-8.002(4), F.A.C.

### **Other Examples of Reporting Across-the-Board Eighth Criterion Adjustments**

An example of an actual reported practice of making across-the-board, eighth criterion adjustments is contained in the Hillsborough County property appraiser's 2010 Mass Appraisal Report (authored by Tim Wilmath, MAI, Director of Valuation).

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1 \* This 2010 Mass Appraisal Report was presented as evidence at Board hearings.

2  
3 \* Below are excerpts from this report explaining how across-the-board, eighth criterion  
4 adjustments are made to all property without regard to whether a property was sold  
5 and without regard to which valuation approach or technique was used.  
6

7 *"The property appraiser considers the 8th criterion by adjusting all sale prices*  
8 *downward by 15% to reflect costs of sale. This downward adjustment is made before*  
9 *the sales are used to value the population of properties."*

10  
11 *"Each year, the property appraiser's office submits Form DR-493 to the Department*  
12 *of Revenue, indicating the costs of sale adjustments that were made to sale prices.*  
13 *As indicated below, the Hillsborough County Property Appraiser's office adjusts*  
14 *recorded sale prices by 15% in arriving at assessed values."*  
15

16 *"In the cost/market hybrid approach, the costs of sale adjustment is applied by*  
17 *deducting 15% from sale prices before calculating the appropriate base rate. For*  
18 *example, after deducting land value and extra feature value, the contributory value*  
19 *of an average quality single family home based on 4th quarter sales, is \$54.50 per*  
20 *square foot. Deducting 15% results in a base rate for single family homes of \$46.00*  
21 *per square foot (rounded). This same exercise is conducted for every property type.*  
22 *Once all base rate adjustments have been made, a review of sales ratios is*  
23 *conducted to ensure the assessments are at or below 85% of sale prices."*  
24

25 *"A more common approach to deducting the 15% costs of sale, is to apply rates and*  
26 *factors that achieve an assessment ratio of 85% or less. By ensuring that*  
27 *assessments are at or below 85% of sales prices, the 15% costs of sale adjustment*  
28 *is effectively factored into assessments. When there are no sales of a given property*  
29 *type for a given tax year, the rates extracted from Marshall Valuation Service are*  
30 *adjusted to reflect the 15% costs of sale. For all property types, whether sales exist*  
31 *or not, rates are adjusted to reflect the 15% costs of sale."*  
32

33 *"For land valuation, the goal is a land assessment to vacant sale ratio of 85% or*  
34 *less. When few or even no vacant land sales exist, ratios are reviewed to ensure the*  
35 *estimated land value for any given neighborhood results in an improved*  
36 *assessment-to-sale ratio of 85% or less."*  
37

38 *"In the sales comparison approach, sale prices are adjusted by 15% before*  
39 *adjustments for various factors are applied. This adjustment is evident in the screen*  
40 *shot below."*  
41

42 *"The income models created by our office are designed to arrive at values that are*  
43 *approximately 85% or less of gross sale prices of similar properties."*  
44

45 *"For all property types, the property appraiser strives to achieve assessed values*  
46 *that are at or below 15% of the prior year's selling prices. This is evident in the graph*

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below that illustrates the difference between assessments and selling prices over the past 6 years.”

In another example of an actual reported practice, a document produced in 2011 by another Florida property appraiser contains the following description of how his office applies across-the-board, eighth criterion adjustments in all three approaches to just valuation of all real property, without regard to whether the property was sold.

*“In the Office of the...County Property Appraiser, all recorded sales of real property are reduced by 15% to reflect the seller’s typical “costs of sale.” Thus, only 85% of the recorded sales price is recognized by the Property Appraiser. This adjusted sales prices (reflecting the seller’s “net proceeds”) are then entered into the Property Appraiser’s Computer Assisted Mass Appraisal (CAMA) program, along with other data pertaining to the remaining seven statutory criteria enumerated in section 193.011, Florida Statutes. From this mass compilation of data involving thousands of entries, the Property Appraiser’s computer system generates a market value assessment for the particular kind of property. This is how value indications of real property are developed. The CAMA system, therefore, determines a real property assessment which is based upon the consideration and use, where appropriate, of all eight factors and complies with the requirements of §193.011.”*

*“The CAMA-generated assessment is neither a sales comparison approach to determining value nor an income capitalization approach to value nor a cost less depreciation approach to value. Rather, it is a hybrid of all three appraisal methods in which the eighth criteria is properly considered and used when deriving just value.”*

### **The Eighth Criterion in Real Property Administrative Reviews**

The eighth criterion is one of the statutory criteria in section 193.011, F.S., which Boards and special magistrates must properly consider in administrative reviews of real property just valuations under section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.

Boards and special magistrates should determine whether the property appraiser has reported to the Department an eighth criterion adjustment for the petitioned real property type and whether the Department has accepted the reported adjustment.

\* This determination can be made by reviewing the Form DR-493 submitted annually by each property appraiser and accepted by the Department.

\* These documents are available by clicking on “Assessment Roll Evaluation and Approval” at the following link:  
<http://floridarevenue.com/property/Pages/DataPortal.aspx>

\* The property appraiser lawfully making and reporting these adjustments is a professionally accepted appraisal practice under section 194.301, F.S.

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1  
2 In determining whether the property appraiser's just valuation complies with section  
3 193.011, F.S., and professionally accepted appraisal practices, the Board or special  
4 magistrate is authorized to ask related questions to enable the parties to provide the  
5 evidence necessary for making this determination. See Rule 12D-9.025(7)(b), F.A.C.

6  
7 \* To help determine how the property appraiser properly considered the eighth  
8 criterion in developing the just value presented by the property appraiser, the Board  
9 or special magistrate should ask questions regarding the eighth criterion  
10 adjustments reported on the Form DR-493.

11  
12 \* The Board or special magistrate should also ask questions regarding whether the  
13 property appraiser applied, in arriving at his or her just value for the petitioned  
14 property, the same eighth criterion adjustment reported for the subject property  
15 use code group on the Form DR-493.

16  
17 \* If, in arriving at his or her just value for the petitioned property, the property  
18 appraiser applied an eighth criterion adjustment that is different from the  
19 adjustment that he or she applied to parcels in the subject use code group as  
20 reported on the Form DR-493, the Board or special magistrate should consider  
21 whether the appraisal practice applied to the subject property is arbitrary under  
22 subparagraph 194.301(2)(a)3., F.S.

23  
24 \* If the reported and accepted Form DR-493 is not voluntarily presented as evidence,  
25 the Board or special magistrate should request a copy of such Form DR-493 from  
26 the property appraiser.

27  
28 NOTE: Under subsection 194.301(1), F.S., a Board petitioner is entitled to a  
29 determination by the Board or special magistrate of the appropriateness of the appraisal  
30 methodology used in making the assessment.

31  
32 \* The just value of property must be determined by an appraisal methodology that  
33 complies with the criteria of section 193.011, F.S., and professionally accepted  
34 appraisal practices.

35  
36 Professionally accepted appraisal practices are recognized by the Florida Legislature as  
37 a statutory just valuation criterion that must be properly considered by Boards and  
38 special magistrates in administrative reviews of assessments. See section 194.301, F.S.

39  
40 \* Florida law now requires Boards and special magistrates to employ both section  
41 193.011, F.S., and professionally accepted appraisal practices, in reviewing just  
42 valuations including revising just valuations when required by section 194.301, F.S.

43  
44 Boards and special magistrates must avoid using arbitrary appraisal practices as  
45 described in subparagraph 194.301(2)(a)3., F.S.

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Below are examples of how the Board or special magistrate should properly consider 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**

1. The Board or special magistrate determines from the accepted Form DR-493 that the property appraiser has reported and the Department has accepted a certain percentage adjustment for the eighth criterion for all real property within the petitioned property use code group.
2. The Board or special magistrate determines from the admitted evidence that the property appraiser has not made an eighth criterion adjustment in arriving at the just value presented by the property appraiser for the petitioned property.
  - \* An example of such evidence would be testimonial or documentary evidence from the property appraiser sufficient to prove that he or she did not make an eighth criterion adjustment in developing the just value presented by the property appraiser for the petitioned property.
3. In such case, the Board or special magistrate should make, to the just value presented by the property appraiser for the petitioned property, the same eighth criterion adjustment reported by the property appraiser for the subject use code group on Form DR-493.

NOTE: The Board or special magistrate must avoid double-counting this adjustment. In cases where the property appraiser has already made, in arriving at his or her presented just value for the petitioned property, the same eighth criterion adjustment reported on Form DR-493, the Board or special magistrate must not make an additional eighth criterion adjustment to the property appraiser's presented just value 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**

1. The Board or special magistrate determines from the accepted Form DR-493 that the property appraiser has reported and the Department has accepted a certain percentage adjustment for the eighth criterion for all real property within the petitioned property use code group.
2. The Board or special magistrate determines from the admitted evidence that the property appraiser has already made, in arriving at the just value presented by the property appraiser for the petitioned property, an eighth criterion adjustment that is equal to the adjustment reported for the subject use code group on Form DR-493.

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\* An example of such evidence would be testimonial or documentary evidence from the property appraiser sufficient to prove that he or she did make, in developing the just value presented by the property appraiser for the petitioned property, an eighth criterion adjustment equal to the adjustment reported for the subject use code group on Form DR-493.

3. The Board or special magistrate must avoid repeating the eighth criterion adjustment that has already been made by the property appraiser in arriving at the just value presented by the property appraiser for the petitioned property.

### **Considering the Eighth Criterion and Evidence of a Real Property Sale**

When considering admitted evidence of an arm's length sale of real property, the Board or special magistrate must determine whether an eighth criterion adjustment should be made to the presented sale price under sections 194.301 and 193.011, F.S.

\* The Board or special magistrate must avoid double-counting this adjustment and not repeat any adjustment amount that has already been made to the presented sale price, whether such adjustment amount was made as a dollar amount or a percentage amount.

\* The Board or special magistrate is not precluded from making an eighth criterion adjustment to the presented, arm's length sale price when such adjustment would not result in double-counting and when such adjustment is justified by sufficiently relevant and credible evidence.

\* In considering whether an eighth criterion adjustment to the presented sale price is justified, the Board or special magistrate must first determine the basis or origin of the presented sale price and determine whether the presented sale price has already been adjusted for the eighth criterion.

\* The Board or special magistrate should make, to the presented arm's length sale price, the eighth criterion adjustment that is justified by sufficiently relevant and credible evidence when such adjustment would not result in double-counting.

\* In considering whether an eighth criterion adjustment to the presented sale price is justified, the Board or special magistrate should consider the adjustment lawfully made and lawfully reported by the property appraiser on Form DR-493 for the property use code group of the sold property.

\* If the Board or special magistrate determines that the arm's length sale price presented by one of the parties is equal to the recorded selling price, the Board or special magistrate should make, to such sale price, a percentage adjustment for the eighth criterion that is equal to the percentage adjustment lawfully made and reported by the property appraiser on Form DR-493 for the property use code group of the sold property.

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- \* If the presented sale price is determined to be different from the recorded selling price and if an eighth criterion adjustment would not result in double-counting, the Board or special magistrate should make, to such presented sale price, an eighth criterion adjustment that results in consistency with the adjustment lawfully made and reported by the property appraiser on Form DR-493 for the property use code group of the sold property.

NOTE: If a party believes an overall eighth criterion adjustment greater than that reported on Form DR-493 is justified for a particular sale, the party is responsible for presenting relevant and credible evidence in support of that belief.

- \* Then, the Board or special magistrate is responsible for determining, in accordance with law, whether the hearing record contains sufficient evidence to justify a higher overall eighth criterion adjustment to that particular sale price.

After making an appropriate eighth criterion adjustment, if any, to the presented sale price, the Board or special magistrate should then compare the sold property to the petitioned property in light of the other seven just valuation factors and in accordance with Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

- \* The information above does not suggest or indicate that a Board or special magistrate should “chase sales,” which in this context would mean to automatically adjust the just value of a petitioned property (that was recently sold) to a number that is equal to its adjusted recorded selling price (after an eighth criterion adjustment) while ignoring the other seven just valuation factors.

- \* There is no legal requirement that the net proceeds of sale constitute the deciding factor in just valuation. See In re Steffen, 342 B.R. 861 (Bkrtcy. M.D. Fla. 2006).

- \* The use of net sales price alone, without considering and weighing the other factors, is legally insufficient to constitute compliance with the mandate of Section 193.011, F.S. See Florida Attorney General’s Opinion [AGO 77-106](#), September 29, 1977.

As stated previously in this training module, the just value of any personal property must be excluded from just valuations of real property.

### **Applicability of the Eighth Criterion in Other Valuation Approaches**

Provisions of section 194.301, F.S., require that the just valuation standards of section 193.011, F.S., which include the eighth criterion, must be followed regardless of:

1) whether the property was sold, 2) the valuation approach used, or 3) whether single property appraisal techniques or mass appraisal techniques were used.

- \* None of these three items are supported in current law as just valuation criteria.



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1 The eighth criterion requires proper consideration of the “net proceeds of sale” of the  
2 property, regardless of whether an actual sale of the property has occurred. See Turner  
3 v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000) review denied 780 So.2d  
4 916 (Fla. 2001).

5  
6 \* When an actual sale of the property has not occurred, the appraiser must, in arriving  
7 at just valuation, place himself or herself in the position of the parties to a  
8 hypothetical sale. See Southern Bell Telephone and Telegraph Co. v. Dade County, 275  
9 So.2d 4 (Fla. 1973) and Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd  
10 DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

11  
12 In long-established and accepted practice, Florida property appraisers routinely apply  
13 across-the-board, eighth criterion adjustments in just valuations of real property, without  
14 regard to the valuation approach or technique used or whether the property was sold.

15  
16 \* These adjustments are certified and reported annually by property appraisers on  
17 Forms DR-493, which are available on the Department’s website at:  
18 [ftp://sdrftp03.dor.state.fl.us/DR-493\\_8th\\_Criterion/](ftp://sdrftp03.dor.state.fl.us/DR-493_8th_Criterion/)  
19

20 \* At least two court decisions have noted the practice of making across-the-board  
21 adjustments to real property for the eighth criterion. See Louisville and Nashville  
22 Railroad Co. v. Department of Revenue, State of Fla., 736 F.2d 1495 (11<sup>th</sup> Cir.(Fla.) July 24,  
23 1984), and Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272  
24 (Fla. 4th DCA 1995) review denied 673 So.2d 30 (Fla. 1996).

25  
26 To not apply, when otherwise warranted, the eighth criterion in an administrative review  
27 because the property has not been sold, or based on the valuation approach or  
28 technique used, would result in an arbitrary appraisal practice under subparagraph  
29 194.301(2)(a)3., F.S.

30  
31 The case of Bystrom v. Equitable Life Assurance Society, 416 So.2d 1133 (Fla. 3<sup>rd</sup> DCA  
32 1982) has been cited in support of the proposition that the eighth criterion does not  
33 apply to valuation approaches other than the sales comparison approach or unless the  
34 subject property was sold.

35  
36 \* Such proposition is not supported by current law and is contrary to the long-  
37 established, professionally accepted appraisal practice employed by property  
38 appraisers of making across-the-board, eighth criterion adjustments without regard  
39 to whether the property was sold or to which valuation approach is used.

40  
41 \* The Bystrom case reviewed a 1978 assessment based on 1977 statutes. Later, in  
42 1979, the eighth criterion was amended to add a personal property component. See  
43 Chapter 79-334, Laws of Florida.

44  
45 \* The eighth criterion now requires proper consideration of an adjustment for both  
46 costs of sale and any personal property. See subsection 193.011(8), F.S.

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- \* Bystrom reflects no record evidence of the professionally accepted appraisal practice established long ago by property appraisers of making across-the-board, eighth criterion adjustments to all sales and to all parcels regardless of whether a parcel was sold and regardless of which valuation approach or technique is used.
- \* Perhaps Bystrom does not reflect such record evidence because it predates the statutory amendment that now requires the property appraiser to report the across-the-board, eighth criterion adjustments made by the property appraiser regardless of whether the property was sold and regardless of the valuation approach used. See Chapter 82-388, Laws of Florida, creating subsection 192.001(18), F.S., and see Rule 12D-8.002(4), F.A.C.
- \* The Bystrom case is clearly distinguishable from current practice and, thus, generally would not apply in administrative reviews of assessments under Chapter 194, Part 3, F.S.
- \* The Bystrom holding has been superseded by section 194.301, F.S., which precludes arbitrary just valuation practices and provides that all just valuations must comply with section 193.011, F.S., and professionally accepted appraisal practices.
- \* The law on which the long-established operation of the eighth criterion is based has changed substantially since the assessment date in Bystrom.
- \* The facts in Bystrom reveal that the decision was based on “unconventional or atypical financing.”
- \* Thus, the holding in Bystrom is limited to only factual situations where an adjustment for “unconventional or atypical financing” is the issue. Accordingly, Bystrom would *not preclude* a typical eighth criterion adjustment, in any valuation approach, for “usual and reasonable fees and costs of the sale...”

### **Eighth Criterion Applies in Both Mass Appraisal and Single Property Appraisal**

Some have argued that the eighth criterion applies only to the mass appraisal of groups of properties and is inapplicable to a single property analysis such as a Board petition.

- \* Such argument is not supported in fact or law, and is contrary to the long-established, professionally accepted appraisal practice employed by property appraisers of making across-the-board, eighth criterion adjustments without regard to whether mass appraisal or single property appraisal is used.
- \* Florida law does not provide for any variation in the applicability of the factors in section 193.011, F.S., based on whether mass appraisal or single property appraisal is used.

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\* To not apply, when otherwise warranted, the eighth criterion in an administrative review because the assessment is being reviewed using single property analysis would result in an arbitrary appraisal practice under subparagraph 194.301(2)(a)3., F.S.

\* In fact, a Florida appellate court has approved an eighth criterion adjustment made in the just valuation of a single parcel under judicial review. See Roden v. GAC Liquidating Trust, 462 So.2d 92 (Fla. 2nd DCA 1985).

### **Properly Considering the Eighth Criterion in Other Valuation Approaches**

A previous section in this module addressed the proper consideration of the eighth criterion when comparable sales are used (the sales comparison approach).

\* This section addresses the proper consideration of the eighth criterion in the other two valuation approaches, the income capitalization approach and the cost less depreciation approach.

When considering a value indicator developed by either of these two valuation approaches, the Board or special magistrate must determine whether an eighth criterion adjustment should be made to such value indicator.

\* The Board or special magistrate must avoid double-counting this adjustment and must not repeat any adjustment amount that has already been made, whether such adjustment amount was made as a dollar amount or a percentage amount.

\* The Board or special magistrate is not precluded from making an eighth criterion adjustment to a value indicator developed by the income capitalization approach or the cost less depreciation approach when such adjustment would not result in double-counting and when such adjustment is justified by sufficient evidence.

\* In determining whether to make an eighth criterion adjustment to a value indicator developed by either of these two approaches, the Board or special magistrate must first determine how such value indicator was developed and determine whether the indicator has already been adjusted for the eighth criterion.

\* The Board or special magistrate should make, to a value indicator developed by the income capitalization approach or cost less depreciation approach, the eighth criterion adjustment that is justified by sufficient evidence when this adjustment would not result in double-counting.

\* In determining whether to make an eighth criterion adjustment to such a value indicator, the Board or special magistrate should consider the adjustment lawfully made and lawfully reported by the property appraiser on Form DR-493 for the use code group that contains the use code of the subject property.

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\* When double-counting would not result, the Board or special magistrate should make, to a value indicator developed by either of these two approaches, an eighth criterion adjustment that results in consistency with the adjustment lawfully made and lawfully reported by the property appraiser on Form DR-493 for the use code group of the subject property.

NOTE: If a party believes an overall eighth criterion adjustment greater than that reported on Form DR-493 is justified for a particular value indicator, the party is responsible for presenting relevant and credible evidence in support of that belief.

\* Then, the Board or special magistrate is responsible for determining, in accordance with law, whether the hearing record contains sufficient evidence to justify a higher overall eighth criterion adjustment to that particular value indicator.

As stated previously in this training module, the just value of any personal property must be excluded from just valuations of real property.

### **(NEW) Homestead Residential Improvement Uninhabitable Due to Hurricane Damage**

Information on this new law is included in Module 6 because the administrative review of this tax abatement should be heard by a real estate appraiser special magistrate.

The 2018 Legislature 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 claim for abatement is waived unless a property owner files a sworn application with the property appraiser by March 1, 2019. These amendments are effective March 23, 2018, are retroactive to January 1, 2016, and expire January 1, 2021. See Chapter 2018-118, Sections 17, 14, and 63, Laws of Florida (CS/HB 7087). Section 17, containing the substantive details of this new law, starts on page 20 of the document available at: <http://laws.flrules.org/2018/118>

The legislation 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). Section 14, containing the substantive details of this new law, starts on page 18 of the document available at: <http://laws.flrules.org/2018/118>

The legislation sets forth detailed definitions and specific steps that must be applied in evaluating and processing an abatement.

The abatement requires that a property owner file a sworn application with the property appraiser by March 1, 2019. If this application is not made, the claim for abatement is waived. See section 197.318(2)(a) through (c), F.S.

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If the property appraiser determines that the applicant is not entitled to the claimed abatement, the applicant may file a petition with the value adjustment board, pursuant to section 194.011(3), F.S., requesting that the abatement be granted. See section 197.318(2)(d), F.S.

If the property appraiser determines that the applicant is entitled to an abatement, the property appraiser shall issue an official statement to the tax collector. See section 197.318(2)(d), F.S. The statement must contain:

- The number of days the residential improvement was rendered uninhabitable in the year the hurricane occurred (must be at least 30 days)
- The January 1 just value of the residential parcel
- The post disaster just value of the residential parcel
- The percent change in value

When the tax collector receives this statement from the property appraiser, the tax collector will calculate the abatement and process the refund. See section 197.318(3), F.S.

The Department has adopted forms for the abatement process. See Emergency Rule 12DER18-05, "Forms for Abatement of Taxes for Homestead Residential Improvements Damaged or Destroyed by Hurricanes Hermine, Matthew, or Irma," adopting:

- Form DR-463, Application for Abatement of Taxes for Homestead Residential Improvements
- Form DR-486H, Petition to the Value Adjustment Board for Abatement of Taxes
- Form DR-485H, Decision of the Value Adjustment Board for Abatement of Taxes Petition

### **(NEW) Assessment of Multiple Parcel Buildings**

Legislation enacted in 2018 created section 193.0237, F.S., to provide definitions and a methodology for the assessment of multiple parcel buildings. The statute provides that the just 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). Section 8, containing this new statutory text, starts on page 16 of the document available at: <http://laws.flrules.org/2018/118>

## **Module 7: Administrative Reviews of Classified Use Valuations and Assessed Valuations**

**Training Module 7 addresses the following topics:**

### **PART 1**

#### **Administrative Reviews of Classified Use Valuations**

- Overview of Classified Use Valuation
- Statutory Criteria for Valuing Different Types of Classified Property
  - Statutory Criteria for Valuing Agricultural Property
    - Agricultural Property: The Income Approach
    - Agricultural Property: Quarantine and Eradication Programs
    - Agricultural Property: Special Types
  - Pollution Control Devices
  - Noncommercial Recreation and Conservation Lands
  - Historic Property: Sections 193.503 and 193.505, F.S.
  - High-water Recharge Property
  - Working Waterfront Property (Classification Effective in 2010)
  - Renewable Energy Source Devices
- Competent Substantial Evidence for Establishing a Revised Classified Use Value
- The Administrative Review Process for Classified Use Valuations

### **PART 2**

#### **Administrative Reviews of Assessed Valuations**

- Statutory Criteria for Assessed Valuation of Limited Increase Property
  - Assessment Increase Limitation for Homestead Real Property
  - Assessment Increase Limitation for Non-Homestead Real Property
  - Differences in Administration Between Sections 193.1554 and 193.1555, F.S.
- Authority for Administrative Reviews of Assessed Valuations
- Competent Substantial Evidence for Establishing a Revised Assessed Value
- The Administrative Review Process for Assessed Valuations

### **Learning Objectives**

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

- Identify and apply the definition of classified use value
- Recognize and apply the statutory criteria for classified use valuation
- Identify when the Board or special magistrate is required or is NOT required to make determinations such as findings, conclusions, or decisions

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- Identify and apply the sequence of general procedural steps for administrative reviews of classified use valuations
- Recognize how to apply the preponderance of the evidence standard of proof in administrative reviews of classified use valuations
- Identify the alternative actions required when a presumption of correctness was not established, or was established but later was overcome
- Identify and apply the elements of the definition of competent substantial evidence for establishing a revised classified use value
- Recognize the conditions under which a Board or special magistrate is required to establish a revised classified use value
- Identify and apply the definition of assessed value
- Recognize and apply the statutory criteria for the assessed valuation of homestead property
- Recognize and apply the statutory criteria for the assessed valuation of non-homestead property
- Recognize differences in administration of limitations on non-homestead residential property with nine or fewer units and other non-homestead property
- Identify and apply the sequence of general procedural steps for administrative reviews of assessed valuations of limited increase properties
- Recognize how to apply the preponderance of the evidence standard of proof in administrative reviews of assessed valuations of limited increase properties
- Identify and apply the elements of the definition of competent substantial evidence for establishing a revised assessed value
- Recognize the conditions under which a Board or special magistrate is required to establish a revised assessed value

### PART 1

#### **Overview of Classified Use Valuation**

“Classified use value” means an annual determination of the value of property that is assessed solely based on character or use, without regard to the property’s highest and best use.

Classified use valuations are provided in Section 4(a), (b), and (e), Article VII, of the Florida Constitution (agricultural land, noncommercial recreational land, high-water recharge, conservation land, historic property) and in Section 4(j), Article VII of the State Constitution (working waterfront properties).

NOTE: Legislation has not been enacted to implement assessment exclusions for residential improvements for resistance to wind damage under Section 4(i), Article VII, of the Florida Constitution.

Except for working waterfront property, the statutory criteria for valuation of classified use property are provided in Chapter 193, Part 2, F.S.

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The statutory criteria for working waterfront property are set forth in Section 4(j), Article VII, of the Florida Constitution.

### **Statutory Criteria for Valuing Different Types of Classified Property**

Statutory criteria for the following types of property classifications are presented below.

#### Types of Property Classifications

- Agricultural Property
- Pollution Control Devices
- Noncommercial Recreational and Conservation Lands
- Historic Property
- High-water Recharge Property
- Working Waterfront Property
- Renewable Energy Source Devices

### **Statutory Criteria for Valuing Agricultural Property**

Under Subsection 193.461(6)(a), F.S., the classified use valuation of agricultural land shall consider the following use factors only:

- \* The quantity and size of the property;
- \* The condition of the property;
- \* The present market value of the property as agricultural land;
- \* The income produced by the property;
- \* The productivity of the land in its current use;
- \* The economic merchantability of the agricultural product; and
- \* Such other agricultural factors as may from time to time become applicable and which are reflective of the standard present practices of agricultural use and production.

### **Agricultural Property: The Income Approach**

Under Subsection 193.461(6), F.S., when using the income approach to value agricultural land, the appraiser shall consider the average of the income from the property for the past five years, rather than the income from the last year alone.

- \* Irrigation systems, including pumps and motors physically attached to the land, shall be considered part of the acreage under the income approach and not have a separately assessable value.



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- 1  
2 \* Likewise, litter and waste containment structures on poultry and dairy farms shall be  
3 considered part of the acreage under the income approach and not have a  
4 separately assessable value.  
5

6 **Note:** Legislation was enacted in 2018 to create section 193.4516, F.S., to provide that  
7 tangible personal property owned and operated by a citrus fruit packing or processing  
8 facility is deemed to have a market value no greater than its value for salvage, if such  
9 property is no longer used in the operation of the facility due to Hurricane Irma (2017) or  
10 due to citrus greening. This amendment applies to the 2018 tax roll. See Chapter 2018-  
11 118, Sections 10 and 11, Laws of Florida (CS/HB 7087).  
12

### **Agricultural Property: Quarantine and Eradication Programs**

13 Under Subsection 193.461(7), F.S., agricultural land taken out of production due to a  
14 state or federal quarantine or eradication program shall continue to be classified as  
15 agricultural property.  
16

- 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 non-agricultural use, it will be assessed as non-  
25 agricultural property under section 193.011, F.S.  
26

27 **Note:** Legislation was enacted in 2018 to amend section 193.461(6)(c), F.S. to provide  
28 that screened enclosed structures used in horticultural production for protection from  
29 pests and diseases or to comply with state or federal eradication or compliance  
30 agreements are a part of the average yields per acre and have no separately  
31 assessable value. See Chapter 2018-84, Section 1, Laws of Florida (CS/CS/SB 740).  
32

33 **Note:** Legislation was enacted in 2016 to amend section 193.461(7)(a), F.S., to provide  
34 that lands classified for assessment purposes as agricultural lands that a state or  
35 federal eradication or quarantine program takes out of production will remain agricultural  
36 lands for the remainder of the program. Lands that these programs convert to  
37 nonincome-producing uses will continue to be assessed at a minimum value of up to  
38 \$50 per acre on a single-year assessment methodology.  
39

40 This legislation identifies the Citrus Health Response Program as a state or federal  
41 eradication or quarantine program. The bill allows land to retain its agricultural  
42 classification for five years after the date of execution of a compliance agreement  
43 between the landowner and the Department of Agriculture and Consumer Services  
44 (DACS) or a federal agency, as applicable, for this program or successor programs.  
45

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

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

### **Agricultural Property: Special Types**

In addition to the classified use assessments of agricultural land discussed previously, there are additional provisions in Sections 193.451 and 193.4615, F.S., which address specific kinds of agricultural property.

These provisions usually deal with the assessment of tangible personal property and instruct that such property should either have no value placed upon it or that it should be valued at salvage value.

Items with no value:

- \* Growing annual crops
- \* Nonbearing fruit trees
- \* Raw agricultural products (until offered for sale)

Items valued as salvage:

- \* Citrus grading and classification equipment leased from the Department of Agriculture
- \* Obsolete agricultural equipment

### **Pollution Control Devices**

This property classification and its valuation are governed by Section 193.621, F.S., which provides the following:

- \* Pollution control devices installed in manufacturing or industrial plants or installations shall be valued as salvage;
- \* Demolition and reconstruction of part of such a facility for the purpose of reducing pollution, and which does not substantially increase the productivity of the facility, shall not increase the facility's assessed value;
- \* The property appraiser is authorized to seek a recommendation from the Department of Environmental Protection as to what constitutes pollution control; and

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\* The Department of Environmental Protection is authorized to promulgate rules concerning this classification.

“Salvage value” is defined in rules of the Department of Environmental Protection as follows:

*“the estimated fair market value, if any, which may be realized upon the sale or other disposition of a pollution control facility when it can no longer be used for the purpose for which it was designed.”* See Rule 62-8.020, F.A.C.

### **Noncommercial Recreation and Conservation Lands**

This property classification and its valuation are governed by Section 193.501, F.S.

To receive this classification, property must be subject to a conservation easement, qualified as environmentally endangered land, designated as conservation land, or used for outdoor recreational or park purposes.

If the covenant or conveyance extends for more than ten years, the property shall be valued considering no factors other than those relative to its value for the present use as restricted by the covenant or conveyance.

If the covenant has less than ten years left, the property will be valued at just value considering the restrictions imposed by the covenant.

### **Historic Property: Sections 193.503 and 193.505, F.S.**

Under Subsection 193.503(5), F.S., historic property is to be assessed using the following factors only:

- \* Quantity and size of property;
- \* Condition of property;
- \* Present market value as historic property used for commercial or certain nonprofit purposes; and
- \* Income produced by the property.

The historic property addressed under Subsection 193.505(3), F.S., must be valued recognizing the nature and length of the restriction placed on the use of the property under the provisions of the conveyance or covenant.

### **High-Water Recharge Property**

To allow this classification, the county must choose to adopt an ordinance providing for this classification and its valuation. See Subsections 193.625(1) and (5), F.S.

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1 The county's ordinance must provide the formula for assessing property that qualifies  
2 for this classification. See Subsection 193.625(5)(b), F.S.

3  
4 In counties that choose to adopt such ordinance, municipalities may also adopt an  
5 ordinance providing for classification and valuation of this property type. See Subsection  
6 193.625(5)(d), F.S.

### **Working Waterfront Property (Classification Effective 2010)**

7  
8  
9 The Florida Constitution sets forth criteria for classifying and valuing working waterfront  
10 property.

11  
12 The provisions of Amendment 6, regarding working waterfronts, have been placed in  
13 the Florida Constitution at Article VII, Section (4)(j), effective for the 2010 assessment  
14 year. These provisions state as follows:

- 15  
16  
17 *“(j)(1) The assessment of the following working waterfront properties shall*  
18 *be based upon the current use of the property:*  
19 *a. Land used predominantly for commercial fishing purposes.*  
20 *b. Land that is accessible to the public and used for vessel launches*  
21 *into waters that are navigable.*  
22 *c. Marinas and drystacks that are open to the public.*  
23 *d. Water-dependent marine manufacturing facilities, commercial*  
24 *fishing facilities, and marine vessel construction and repair*  
25 *facilities and their support activities.*  
26 *(2) The assessment benefit provided by this subsection is subject to*  
27 *conditions and limitations and reasonable definitions as specified by*  
28 *the legislature by general law.”*  
29

30 The constitutional amendment on working waterfront property is self-executing with  
31 authorization for the Legislature to elaborate by general law.

32  
33 In the 2009 and 2010 sessions, the Legislature considered bills that did not pass but  
34 that would have contained guidance for classifying and valuing working waterfront  
35 property. These bills would have applied to the 2010 tax year if they had become law.

36  
37 Amendment 6, creating classification of property used for working waterfronts, is  
38 effective for the 2010 year in the absence of legislation.

### **Renewable Energy Source Devices**

- 39  
40  
41 \* Legislation enacted in 2013 created section 193.624, F.S., to provide for  
42 assessment of a "renewable energy source device" installed on or after January 1,  
43 2013, to new and existing residential real property.  
44

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- \* When determining the assessed value of real property used for residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered.
- \* This requirement is an exception to certain provisions relating to assessment of changes, additions, or improvements in sections 193.155 and 193.1554, F.S.
- \* This legislation is effective July 1, 2013 and applies to assessments and administrative reviews beginning in 2014. See Chapter 2013-77, Sections 1, 2, and 3, Laws of Florida (HB 277).

**Note:** Legislation enacted in 2017 amended section 193.624, F.S., to provide that, for nonresidential real property, 80 percent of the just value attributable to a renewable energy source device may not be considered in determining the assessed value of the property; this provision applies to devices installed on nonresidential property on or after January 1, 2018, except in a fiscally constrained county for which application for comprehensive plan amendment or planned unit development zoning is made by December 31, 2017. This change was effective July 1, 2017 and applies to assessments and administrative reviews beginning in 2018. See Chapter 2017-118, Sections 2 and 8, Laws of Florida (CS/SB 90).

### **Competent Substantial Evidence for Establishing a Revised Classified Use Value**

Competent substantial evidence for establishing a revised classified use value, as part of an administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:

1. Cumulatively meets the statutory criteria that apply to the classified use valuation of the petitioned property;
2. Tends to prove (is probative of) classified use value as of January 1 of the assessment year under review;
3. Is sufficiently relevant and credible to be accepted as adequate to support (legally justify) the conclusion reached; and
4. Otherwise meets all requirements of law.

### **The Administrative Review Process for Classified Use Valuations**

Below is a sequence of general procedural steps for Boards and special magistrates to follow in administrative reviews of classified use valuations to fulfill the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(3), F.A.C.

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This sequence of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

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

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

In following this sequence of steps, Boards or special magistrates must also meet the requirements of Rule 12D-9.025(1), F.A.C., which are the following:

- \* Review the evidence presented by the parties;
- \* Determine whether the evidence presented is admissible;
- \* Admit the evidence that is admissible; and
- \* Identify the evidence presented to indicate that it is admitted or not admitted.

The sequence of general procedural steps presented below is based on Rule 12D-9.027(3), F.A.C.

1. Consider the admitted evidence presented by the parties.
2. Identify and consider the statutory criteria that apply to the classified use valuation of the petitioned property.
3. Identify and consider the essential characteristics of the petitioned property based on the admitted evidence and the statutory criteria that apply to the classified use valuation of the property.
4. Identify the valuation methodology used by the property appraiser in developing the classified use valuation of the petitioned property, and consider this valuation methodology in light of the essential characteristics of the property.
5. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser’s methodology complies with the statutory criteria that apply to the classified use valuation of the property.
6. Determine whether the property appraiser’s classified use valuation methodology is appropriate and whether the property appraiser established a presumption of correctness for the assessment.

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- a) The property appraiser's classified use valuation methodology is not appropriate and a presumption of correctness is not established unless the admitted evidence proves by a preponderance of the evidence that the property appraiser's classified use valuation methodology complies with the statutory criteria that apply to the classified use valuation of the property.
  - b) The property appraiser's classified use valuation methodology is appropriate and the presumption of correctness is established only when the admitted evidence proves by a preponderance of the evidence that the property appraiser's classified use valuation methodology complies with the statutory criteria that apply to the classified use valuation of the property.
7. If the Board or special magistrate determines that a presumption of correctness is established, the Board or special magistrate must then determine whether the admitted evidence proves by a preponderance of the evidence that:
  - a) The property appraiser's classified use valuation does not represent classified use value; or
  - b) The property appraiser's classified use valuation is arbitrarily based on valuation practices that are different from the valuation practices generally applied by the property appraiser to comparable property within the same county.
8. If the Board or special magistrate determines that one or both of the conditions specified under Step 7 exist, the presumption of correctness is overcome.
9. If the property appraiser does not establish a presumption of correctness, or if the presumption of correctness is overcome, the Board or special magistrate shall determine whether the hearing record contains competent, substantial evidence of classified use value that cumulatively meets the statutory criteria that apply to the classified use valuation of the property.
  - a) If the hearing record contains competent, substantial evidence for establishing a revised classified use value, the Board or an appraiser special magistrate shall establish a revised classified use value based only upon such evidence. In establishing a revised classified use value, the Board or special magistrate is not restricted to any specific value offered by one of the parties.
  - b) If the hearing record lacks competent, substantial evidence for establishing a revised classified use value, the Board or special magistrate shall remand the assessment to the property appraiser with appropriate directions for establishing classified use value. The property appraiser is required to follow these directions.
10. If the property appraiser establishes a presumption of correctness as described in Step 6 above and that presumption of correctness is not overcome as described in 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, except:

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;
  - 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;
2. If the transfer is between husband and wife;
3. If the transfer occurs by operation of law under Section 732.401, F.S.; or



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- 1 4. If on the death of the owner, the transfer is between the owner and another who is  
2 a permanent resident and is legally or naturally dependent upon the owner.  
3

4 **Note:** Legislation enacted in 2013 amended section 193.155, F.S., to provide that a  
5 property transfer is not a change of ownership if the transfer is to a person who is  
6 entitled to the homestead exemption both before and after the transfer and the person is  
7 a lessee entitled to the homestead exemption under section 196.041(1), F.S.  
8

- 9 \* These changes are effective July 1, 2013, and apply to assessments and  
10 administrative reviews beginning in 2014. See Chapter 2013-72, Section 4, Laws of  
11 Florida (SB 1830).  
12  
13

### **Assessment Increase Limitation for Non-Homestead Real Property**

14 Beginning in 2009, for non-homestead property there is a 10 percent limitation on the  
15 annual increase in assessed value.  
16  
17

18 The types of property eligible for the 10 percent cap are provided under Section  
19 193.1554, F.S., and Section 193.1555, F.S.  
20

21 Section 193.1554, F.S., relates to the assessment of non-homesteaded residential  
22 property that contains nine or fewer dwelling units that does not receive a homestead  
23 exemption under Section 196.031, F.S., including vacant property zoned and platted for  
24 residential use.  
25

26 Section 193.1555, F.S., relates to residential property with 10 or more units and to non-  
27 residential real property.  
28

29 “Non-residential real property” means real property that is not subject to the assessment  
30 limitations set forth in subsection 4(a), (b), (c), (d), or (g), Article VII of the Florida  
31 Constitution. This involves property classified agricultural, high-water recharge, non-  
32 commercial recreational, conservation, and homestead limited increase property.  
33

34 When ownership or control of the property changes, the property is subject to  
35 reassessment at just value.  
36

37 A person or entity that owns non-homestead property subject to receiving the 10  
38 percent assessment increase limitation under Sections 193.1554 or 193.1555, F.S.,  
39 must notify the property appraiser of the county where the property is located of any  
40 change of ownership or control as defined in Sections 193.1554(5) and 193.1555(5),  
41 F.S. See section 193.1556, F.S.  
42

43 Rule 12D-8.00659, F.A.C., (Notice of Change of Ownership or Control of Non-  
44 Homestead Property) contains detailed provisions explaining the change in ownership  
45 and control. Forms are included for the owner to notify the property appraiser as  
46 provided in sections 193.1554 and 193.1555, F.S.

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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 new assessed value for the property (as non-homestead) must be equal to just value. Then, the new assessed value must be the base to which the ten percent cap for non-homestead property can be applied in future years. This is also addressed in 2012 legislation. See Chapter 2012-193, Sections 6 and 7, Laws of Florida.

### **Differences in Administration Between Sections 193.1554 and 193.1555, F.S.**

The administration of Sections 193.1554 and 193.1555, F.S., is similar but has four main differences. These differences are:

1. For residential with nine or fewer dwelling units Section 193.1554, F.S., there is no change in ownership if the transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage.
  - \* This provision is not in Section 193.1555, F.S.
2. For residential with 10 units or more and nonresidential, Section 193.1555, F.S., property must be reassessed at just value if there is a “qualifying” improvement, meaning any substantially completed improvement that increases the just value of the property by at least 25 percent.
  - \* “Improvement” is an addition or change to land or buildings that increases their value and is more than a repair or a replacement.
  - \* This provision is not in Section 193.1554, F.S.
3. Under Section 193.1554, F.S., changes, additions, or improvements include improvements to common areas or other property that directly benefit the property.
  - \* Such changes are assessed at just value and apportioned among the benefitting parcels.
  - \* This provision is not in Section 193.1555, F.S.
4. Under Section 193.1554, F.S., provisions relating to the replacement of property damaged or destroyed by misfortune or calamity state that the assessed value is not to increase if the total square footage of the property as changed or improved does not exceed 1,500 square feet.

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\* This provision is not in Section 193.1555, F.S.

\* The latter section, however, states that the improvements cannot have changed the property's character or use, a provision not in Section 193.1554, F.S.

### **Authority for Administrative Reviews of Assessed Valuations**

It is clear under Section 194.301, F.S., amended by HB 521, that the Board or special magistrate may consider petitions on the current year assessed value. Section 194.301(1), F.S. states:

*“... if the appraiser proves by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, ...”*

Section 194.301(2)(a), F.S., states the Board or special magistrate may determine:

*“... that the assessed value:*

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

These provisions refer to the calculation of limited increase property and refer to the statutory criteria applicable to assessment of such properties. Also, see Rule 12D-9.027(3)(a), (b), and (d), F.A.C.

Thus, it is clear that a petitioner may appeal an assessed valuation for the current year under the statutory criteria pertaining to calculation of assessed value.

### **Competent Substantial Evidence for Establishing a Revised Assessed Value**

Competent substantial evidence for establishing a revised assessed value, as part of an administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:

1. Cumulatively meets the statutory criteria that apply to the assessed valuation of the petitioned property;
2. Tends to prove (is probative of) assessed value as of January 1 of the assessment year under review;
3. Is sufficiently relevant and credible to be accepted as adequate to support (legally justify) the conclusion reached; and
4. Otherwise meets all requirements of law.

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### **The Administrative Review Process for Assessed Valuations**

Below is a sequence of general procedural steps for Boards and special magistrates to follow in administrative reviews of assessed valuations of limited increase property to fulfill the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(3), F.A.C.

This sequence of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

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

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

In following this sequence of steps, Boards or special magistrates must also meet the requirements of Rule 12D-9.025(1), F.A.C., listed following:

- a) Review the evidence presented by the parties;
- b) Determine whether the evidence presented is admissible;
- c) Admit the evidence that is admissible; and
- d) Identify the evidence presented to indicate that it is admitted or not admitted.

The sequence of general procedural steps presented below is based on Rule 12D-9.027(3), F.A.C.

1. Consider the admitted evidence presented by the parties.
2. Identify and consider the statutory criteria that apply to the assessed valuation of the petitioned property.
3. Identify and consider the essential characteristics of the petitioned property based on the admitted evidence and the statutory criteria that apply to the assessed valuation of the property.
4. Identify the valuation methodology used by the property appraiser in developing the assessed valuation of the petitioned property, and consider this valuation methodology in light of the essential characteristics of the property.

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- 1 5. Determine whether the admitted evidence proves by a preponderance of the  
2 evidence that the property appraiser's methodology complies with the statutory  
3 criteria that apply to the assessed valuation of the property.  
4
- 5 6. Determine whether the property appraiser's assessed valuation methodology is  
6 appropriate and whether the property appraiser established a presumption of  
7 correctness for the assessment.  
8
  - 9 a) The property appraiser's assessed valuation methodology is not appropriate and  
10 a presumption of correctness is not established unless the admitted evidence  
11 proves by a preponderance of the evidence that the property appraiser's  
12 assessed valuation methodology complies the statutory criteria that apply to the  
13 assessed valuation of the property.  
14
  - 15 b) The property appraiser's assessed valuation methodology is appropriate and the  
16 presumption of correctness is established only when the admitted evidence  
17 proves by a preponderance of the evidence that the property appraiser's  
18 assessed valuation methodology complies with the statutory criteria that apply to  
19 the assessed valuation of the property.  
20
- 21 7. If the Board or special magistrate determines that a presumption of correctness is  
22 established, the Board or special magistrate must then determine whether the  
23 admitted evidence proves by a preponderance of the evidence that:  
24
  - 25 a) The property appraiser's assessed valuation does not represent assessed value;  
26 or  
27
  - 28 b) The property appraiser's assessed valuation is arbitrarily based on valuation  
29 practices that are different from the valuation practices generally applied by the  
30 property appraiser to comparable property within the same county.  
31
- 32 8. If the Board or special magistrate determines that one or both of the conditions  
33 specified under Step 7 exist, the presumption of correctness is overcome.  
34
- 35 9. If the property appraiser does not establish a presumption of correctness, or if the  
36 presumption of correctness is overcome, the Board or special magistrate shall  
37 determine whether the hearing record contains competent, substantial evidence of  
38 assessed value that cumulatively meets the statutory criteria that apply to the  
39 assessed valuation of the property.  
40
  - 41 a) If the hearing record contains competent, substantial evidence for establishing a  
42 revised assessed value, the Board or an appraiser special magistrate shall  
43 establish a revised assessed value based only upon such evidence. In  
44 establishing a revised assessed value, the Board or special magistrate is not  
45 restricted to any specific value offered by one of the parties.  
46

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- 1        b) If the hearing record lacks competent, substantial evidence for establishing a  
2        revised assessed value, the Board or special magistrate shall remand the  
3        assessment to the property appraiser with appropriate directions for establishing  
4        assessed value. The property appraiser is required to follow these directions.  
5
- 6    10. If the property appraiser establishes a presumption of correctness as described in  
7        Step 6 above and that presumption of correctness is not overcome as described in  
8        Step 7 above, the assessment stands.

## **Module 8: Administrative Reviews of Tangible Personal Property Just Valuations**

### **Training Module 8 addresses the following topics:**

- Statutory Law Beginning in 2009 (See HB 521)
- Overview of Appraisal Development
- Legal Provisions on the Tangible Personal Property Appraisal Guidelines
- Florida Information on Appraisal Development
- Scope of Authority for Administrative Reviews
- Definition of Tangible Personal Property (TPP)
- Exemptions for Tangible Personal Property
- Requirement for Taxpayers to File TPP Returns
- The Eight Factors of Just Valuation
- Proper Consideration of the Just Valuation Factors
- Consideration of Previous Year's Board-Adjusted Assessment
- Standard of Proof for Administrative Reviews
- 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
- Legal Limitations on Administrative Reviews
- Sequence of General Procedural Steps
- Operation of the Eighth Criterion Under Florida Law
- The Eighth Criterion in Reviews of Tangible Personal Property

### **Learning Objectives**

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

- Identify the changes enacted in the 2009 statutory law (HB 521)
- Distinguish between who does appraisal development and who does NOT
- Identify legal provisions on the Tangible Personal Property Appraisal Guidelines
- Identify legal provisions that represent limitations on the discretion of property appraisers
- Recognize that the factor in Section 193.011(8), F.S., must be properly considered in the just valuation of tangible personal property (TPP)
- Recognize the four components of the definition of personal property

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- 1 • Identify how the Florida Supreme Court has addressed intangible personal property
- 2 in the just valuation of tangible personal property
- 3 • Recognize the requirement that personal property types other than TPP must be
- 4 excluded from just valuations of TPP
- 5 • Distinguish between appraisal development and administrative reviews
- 6 • Recognize and apply the scope of authority for administrative reviews
- 7 • Identify the items that a Board or special magistrate may consider in addition to
- 8 admitted evidence
- 9 • Recognize and apply the definition of tangible personal property (TPP)
- 10 • Identify the requirements for filing a TPP return (Form DR-405)
- 11 • Recognize the types of information required on a filed return (Form DR-405)
- 12 • Identify how the property appraiser may use a filed TPP return
- 13 • Recognize the link between the requirement to file a TPP return with the property
- 14 appraiser and the right to file a petition with the Board
- 15 • Identify the eight factors of just valuation in Section 193.011, F.S.
- 16 • Recognize the legal standards for consideration of the just valuation factors
- 17 • Identify the provisions of Section 193.016, F.S., regarding the property appraiser's
- 18 consideration of the previous year's Board-adjusted assessment
- 19 • Recognize how the Florida Supreme Court has addressed Section 193.016, F.S.
- 20 • Identify the applicable standard of proof, its definition, and how it is applied
- 21 • Identify standards of proof that do NOT apply in administrative reviews
- 22 • Recognize that a petitioner is NOT required to present an opinion of value
- 23 • Understand the order of presentation of evidence
- 24 • Identify and apply the steps for evaluating evidence in administrative reviews
- 25 • Recognize and apply the provisions for ruling on the admissibility of evidence
- 26 • Identify and apply the definitions of relevant evidence and credible evidence
- 27 • Recognize and apply the standards for determining the sufficiency of evidence
- 28 • Identify types of information that are NOT sufficient evidence for establishing a
- 29 presumption of correctness
- 30 • Recognize the requirements for establishing a presumption of correctness
- 31 • Recognize the requirements for overcoming a presumption of correctness
- 32 • Identify the alternative actions required when a presumption of correctness was not
- 33 established, or was established but later was overcome
- 34 • Identify and apply the elements of the definition of competent substantial evidence
- 35 for establishing a revised assessment
- 36 • Recognize the conditions under which a Board or special magistrate is required to
- 37 establish a revised just value
- 38 • Identify legal limitations on administrative reviews
- 39 • Apply the sequence of general procedural steps for administrative reviews of just
- 40 valuations
- 41 • Identify when the Board or special magistrate is required or is NOT required to make
- 42 determinations such as findings, conclusions, or decisions
- 43 • Recognize that the factor in Section 193.011(8), F.S., must be properly considered in
- 44 administrative reviews of just valuations of tangible personal property, regardless of
- 45 whether an actual sale of the property has occurred
- 46
- 47



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### **Statutory Law Beginning in 2009 (See HB 521)**

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, Florida Statutes, as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

The complete text of this current legislation is presented following:

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

#### Section 1.

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

*194.301 Challenge to ad valorem tax assessment.—*

*(1) In any administrative or judicial action in which a taxpayer challenges an ad valorem tax assessment of value, 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 s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. However, a taxpayer who challenges an assessment is entitled to a determination by the value adjustment board or court of the appropriateness of the appraisal methodology used in making the assessment. The value of property must be determined by an appraisal methodology that complies with the criteria of s. 193.011 and professionally accepted appraisal practices. The provisions of this subsection preempt any prior case law that is inconsistent with this subsection.*

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

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

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

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

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

*(b) If the party challenging the assessment satisfies the requirements of paragraph (a), the presumption provided in subsection (1) is overcome and the value adjustment board or the court shall establish the assessment if there is competent, substantial evidence of value in the record which cumulatively meets the criteria of s. 193.011 and professionally*

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1 *accepted appraisal practices. If the record lacks such evidence, the matter must be*  
2 *remanded to the property appraiser with appropriate directions from the value adjustment*  
3 *board or the court, and the property appraiser must comply with those directions.*

4  
5 *(c) If the revised assessment following remand is challenged, the procedures described*  
6 *in this section apply.*

7  
8 *(d) If the challenge is to the classification or exemption status of the property, there is no*  
9 *presumption of correctness and the party initiating the challenge has the burden of*  
10 *proving by a preponderance of the evidence that the classification or exempt status*  
11 *assigned to the property is incorrect.*

### 12 13 Section 2.

14 *(1) It is the express intent of the Legislature that a taxpayer shall never have the burden*  
15 *of proving that the property appraiser's assessment is not supported by any reasonable*  
16 *hypothesis of a legal assessment. All cases establishing the every-reasonable-*  
17 *hypothesis standard were expressly rejected by the Legislature on the adoption of chapter*  
18 *97-85, Laws of Florida. It is the further intent of the Legislature that any cases published*  
19 *since 1997 citing the every-reasonable-hypothesis standard are expressly rejected to the*  
20 *extent that they are interpretative of legislative intent.*

21  
22 *(2) This section is intended to clarify existing law and apply retroactively.*

### 23 24 Section 3.

25 *This act shall take effect upon becoming a law and shall first apply to assessments in*  
26 *2009.*

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

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

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

30  
31 *This law is now in effect and applies to the administrative review of assessments*  
32 *beginning with 2009 assessments.*

33  
34 *\* Procedural steps for implementing this 2009 legislation for administrative reviews of*  
35 *just valuations are presented later in this training module.*

36  
37 *Board attorneys are responsible for ensuring that this important legislation is*  
38 *implemented for all administrative reviews of assessments, starting in 2009.*

39  
40 *This law significantly changed the standard of review for assessments, and Boards and*  
41 *special magistrates must become familiar with this law to ensure its implementation.*

42  
43 *Where appropriate, key points from this current law are presented in this and other*  
44 *modules of this training. However, users of this training are advised to obtain a copy of*  
45 *the current law and review it carefully to understand all of its provisions.*  
46

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1 The 2009 law change provides a lower standard of proof, called “preponderance of the  
2 evidence,” for determining whether the assessment is incorrect.

3  
4 \* “Preponderance of the evidence” is a standard (level) of proof that means “greater  
5 weight of the evidence” or “more likely than not.”  
6

7 In determining whether the assessment is incorrect, Boards and special magistrates  
8 must not use any standard of proof other than the preponderance of the evidence  
9 standard, as provided in Section 194.301, F.S., as amended by Chapter 2009-121,  
10 Laws of Florida (House Bill 521).  
11

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

17 *“It is the express intent of the Legislature that a taxpayer shall never have the burden of*  
18 *proving that the property appraiser’s assessment is not supported by any reasonable*  
19 *hypothesis of a legal assessment.”* See Subsection 194.3015(1), F.S., as created by Chapter 2009-  
20 121, Laws of Florida (House Bill 521).  
21

22 The current statute provides the following: *“The provisions of this subsection preempt*  
23 *any prior case law that is inconsistent with this subsection.”* See Subsection 194.301(1), F.S.,  
24 as amended by Chapter 2009-121, Laws of Florida (House Bill 521).  
25

26 References to Florida court decisions are presented in this training. Generally, these  
27 court decisions predate the 2009 changes to statutory law. The current statutory law  
28 supersedes these decisions to the extent these decisions conflict with it.  
29

30 Thus, the information from these court decisions, as presented in this training, has been  
31 modified where appropriate for consistency with the 2009 changes in the statute.  
32

33 For example, court decisions recognize that property appraisers have discretion, which  
34 is limited by other provisions of law, in weighing just valuation factors and in selecting  
35 an appraisal methodology.  
36

37 \* The current statute contains an additional requirement that the appraisal  
38 methodology used in making the assessment must comply with “professionally  
39 accepted appraisal practices.”  
40

41 \* This current requirement represents an additional statutory limitation on the property  
42 appraiser’s discretion.  
43

44 Therefore, where appropriate in this training, the current requirement on “professionally  
45 accepted appraisal practices” has been added to modify the information from prior court  
46 decisions for consistency with the current statutory law.  
47

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\* This training module includes references to this current statutory law where appropriate.

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

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

### **Overview of Appraisal Development**

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

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

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

Generally, property appraisers use a professionally accepted methodology called mass appraisal to develop tangible personal property (TPP) just values each year.

The Tangible Personal Property (TPP) Appraisal Guidelines generally describe the mass appraisal development process for TPP under Florida law.

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

### **Legal Provisions on the Tangible Personal Property Appraisal Guidelines**

Below are provisions from Section 195.032, Florida Statutes, describing the Tangible Personal Property Appraisal Guidelines.

1. *"The standard measures of value shall provide guidelines for the valuation of property and methods for property appraisers to employ in arriving at the just valuation of particular types of property consistent with section 193.011..."*
2. *"The standard measures of value shall assist the property appraiser in the valuation of property and be deemed prima facie correct, but shall not be deemed to establish the just value of any property."*

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See Rule 12D-51.002, Florida Administrative Code, for more information on the Tangible Personal Property (TPP) Appraisal Guidelines.

### **Florida Information on Appraisal Development**

The Tangible Personal Property Appraisal Guidelines contain descriptions of appraisal methods that may be used by property appraisers to develop just valuations of tangible personal property consistent with Florida law.

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

A copy of these guidelines is available at the following web address:

<http://floridarevenue.com/dor/property/tpp/>

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

Florida's constitution has "delegated to the Legislature the responsibility for deciding the specifics of how that 'just valuation' would be secured." Sunset Harbour Condominium Ass'n v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Collier County v. State, 733 So.2d 1012, 1019 (Fla. 1999).

In section 193.011, F.S., the Florida Legislature has effectuated the constitutional requirement for just valuation by specifying the eight factors that must be considered in arriving at just valuations of all property.

In 1963, the Legislature enacted the first seven just valuation factors, effective January 1, 1964. See Chapter 63-250, Laws of Florida, creating Section 193.021, F.S., which was re-numbered in 1969 as Section 193.011, F.S., by Chapter 69-55, Laws of Florida.

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

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

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

Then, in 1967, the legislature added the eighth just valuation criterion (net proceeds of sale) as a new Subsection 193.021(8), Florida Statutes. See Chapter 67-167, Laws of

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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.

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

*“The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. 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 must be properly considered in the just valuation of tangible personal property. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

NOTE: More information on the eighth criterion is presented later in this section and in the last two sections of this module.

Appraisal is an art, not a science. See Powell v. Kelly, 223 So.2d 305 (Fla. 1969).

The determination of just value inherently and necessarily requires the exercise of appraisal judgment by the property appraiser. See Department of Revenue v. Howard, 916 So.2d 640 (Fla. 2005).

\* However, as indicated following, the property appraiser’s discretion is not unbridled and is limited by several other 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 four 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).

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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 (Bkrtcy. M.D. Fla. 2006). Also, see 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.

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).

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\* 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.

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

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

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

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

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

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

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

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

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

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

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



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

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

*“In establishing a revised just value, the board or special magistrate is not restricted to any specific value offered by one of the parties.”* See Rule 12D-9.027(2)(b)3.a., F.A.C.

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

The Board or special magistrate is authorized to make calculations, and to make an adjustment to the property appraiser’s value based on competent substantial evidence of just value in the record. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977), stating that when the record contains competent substantial evidence of value the court may make necessary value calculations or adjustments based on such evidence.

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

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

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

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

*“The powers, authority, duties and functions of the board, insofar as they are appropriate, apply equally to real property and tangible personal property (including taxable household goods).”* See Rule 12D-10.003(2), F.A.C.

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1  
2 In administrative reviews, Boards and special magistrates are not authorized to consider  
3 any evidence except evidence properly presented by the parties and properly admitted  
4 into the record for consideration. See Rule 12D-9.025(4)(a), F.A.C.

5  
6 In addition to admitted evidence, Boards and special magistrates are authorized to  
7 consider only the following items in administrative reviews.

- 8  
9 1. Legal advice from the Board legal counsel;  
10  
11 2. Information contained or referenced in the Department's Uniform Policies and  
12 Procedures Manual and Accompanying Documents;  
13  
14 3. Information contained or referenced in the Department's training for value  
15 adjustment boards and special magistrates; and  
16  
17 4. Professional texts that pertain only to professionally accepted appraisal practices  
18 that are not inconsistent with Florida law.  
19  
20

### **Definition of Tangible Personal Property (TPP)**

21  
22 *"Tangible personal property" means all goods, chattels, and other articles of value (but*  
23 *does not include the vehicular items enumerated in s. 1(b), Art. VII of the State*  
24 *Constitution and elsewhere defined) capable of manual possession and whose chief*  
25 *value is intrinsic to the article itself. 'Construction work in progress' consists of those*  
26 *items of tangible personal property commonly known as fixtures, machinery, and*  
27 *equipment when in the process of being installed in new or expanded improvements to*  
28 *real property and whose value is materially enhanced upon connection or use with a*  
29 *preexisting, taxable, operational system or facility. Construction work in progress shall*  
30 *be deemed substantially completed when connected with the preexisting, taxable,*  
31 *operational system or facility. Inventory and household goods are expressly excluded*  
32 *from this definition."* See Subsection 192.001(11)(d), F.S.  
33  
34

### **Exemptions for Tangible Personal Property**

35  
36 Chapter 196, Florida Statutes, exempts certain property from the TPP tax.

37  
38 Exempt property may be subject to TPP return filing requirements.

39  
40 TPP may be exempt only if it meets the requirements for an exemption set forth in  
41 Chapter 196, Florida Statutes.

42  
43 NOTE: For those interested, more information on exemptions for tangible personal  
44 property is presented in Module 9 of this training. However, appraiser special  
45 magistrates are not required to complete Module 9 of this training.  
46

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### **Requirement for Taxpayers to File TPP Returns**

A TPP return (Form DR-405) is a Florida Department of Revenue form that owners of certain TPP are required by law to complete and file with the property appraiser each year by April 1st, unless a lawful extension has been granted.

Form DR-405 can be viewed on the Department's website at the following link:  
<http://floridarevenue.com/dor/property/tpp/>

Owners of TPP valued at \$25,000 or less may receive a filing waiver from the property appraiser upon filing an initial return.

Florida law provides for financial penalties when TPP returns are not lawfully filed. See Sections 193.072 and 196.183, F.S.

The TPP return contains information that the property appraiser may consider in arriving at just value.

The TPP return is the property appraiser's primary data collection method for TPP characteristics.

Other data collection methods, such as physical inspections, may be used when necessary.

A TPP assessment may not be contested with the Board unless the required TPP return was timely filed with the property appraiser. The term "timely filed" means filed by the deadline established in section 193.062, F.S., or before the expiration of any extension granted under section 193.063, F.S. If notice is mailed pursuant to section 193.073(1)(a), F.S., a complete return must be submitted under section 193.073(1)(a), F.S., for the assessment to be contested. See Subsection 194.034(1)(j), F.S.

### **The Eight Factors of Just Valuation**

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

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

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

(2) *The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and*

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1 *best use, and considering any moratorium imposed by executive order, law, ordinance,*  
2 *regulation, resolution, or proclamation adopted by any governmental body or agency or*  
3 *the Governor when the moratorium or judicial limitation prohibits or restricts the*  
4 *development or improvement of property as otherwise authorized by applicable law.*  
5 *The applicable governmental body or agency or the Governor shall notify the property*  
6 *appraiser in writing of any executive order, ordinance, regulation, resolution, or*  
7 *proclamation it adopts imposing any such limitation, regulation, or moratorium;*

8  
9 (3) *The location of said property;*

10  
11 (4) *The quantity or size of said property;*

12  
13 (5) *The cost of said property and the present replacement value of any improvements*  
14 *thereon;*

15  
16 (6) *The condition of said property;*

17  
18 (7) *The income from said property; and*

19  
20 (8) *The net proceeds of the sale of the property, as received by the seller, after*  
21 *deduction of all of the usual and reasonable fees and costs of the sale, including the*  
22 *costs and expenses of financing, and allowance for unconventional or atypical terms of*  
23 *financing arrangements. When the net proceeds of the sale of any property are utilized,*  
24 *directly or indirectly, in the determination of just valuation of realty of the sold parcel or*  
25 *any other parcel under the provisions of this section, the property appraiser, for the*  
26 *purposes of such determination, shall exclude any portion of such net proceeds*  
27 *attributable to payments for household furnishings or other items of personal property.”*

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

31 Section 193.011, Florida Statutes, states that property appraisers must consider the  
32 factors of just valuation.

33  
34 Florida court decisions have used the terms *lawfully*, *properly*, *duly*, and *carefully* to  
35 describe the standard of care required of property appraisers in considering each of the  
36 eight factors.

37  
38 \* For example, one court decision used the terms *lawfully* and *properly* to describe the  
39 property appraiser's standard of care. See Mazourek v. Wal-Mart Stores, 831 So.2d 85  
40 (Fla. 2002).

41  
42 \* Another court decision used the term *duly* to describe the property appraiser's  
43 standard of care. See Atlantic International Investment Corp. v. Turner, 383 So.2d 919  
44 (Fla. 5th DCA 1980).

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1 \* Other court decisions and the Florida Attorney General have used the terms  
2 *carefully* and *careful* to describe the property appraiser's standard of care for  
3 considering each of the eight factors.

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

10  
11 \* *"Just value is to be determined by giving careful consideration to each of the factors*  
12 *contained in s. 193.011 and by giving such weight to a factor as a particular factual*  
13 *situation may justify."* See Florida Attorney General's Opinion [AGO 77-106](#), September  
14 29, 1977.

15  
16 After lawfully considering the factors, the property appraiser may discard entirely any  
17 factor that is not probative (indicative) of just value under the circumstances, as long as  
18 the appraisal methodology used complies with professionally accepted appraisal  
19 practices. See Mazourek v. Wal-Mart Stores, 831 So.2d 85 (Fla. 2002), and Section 194.301,  
20 F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). Also, see In re  
21 Steffen, 342 B.R. 861 (Bkrtcy. M.D. Fla. 2006).

22  
23 However, the property appraiser cannot simply "out of hand" reject, without careful  
24 consideration, a just valuation factor as being inappropriate in a particular case. See  
25 Daniel v. Canterbury Towers, Inc., 462 So.2d 497 (Fla. 2nd DCA 1985).

26  
27 In administrative reviews, the property appraiser is responsible for proving by a  
28 preponderance of the evidence that he or she complied with Section 193.011, F.S., by  
29 properly considering each of the eight factors in developing original just valuations. See  
30 Subsection 194.301(1), F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill  
31 521).

32  
33 If the property appraiser does not prove by a preponderance of the evidence that he or  
34 she properly considered each of the eight factors in developing the just value  
35 assessment, the Board or special magistrate must conclude that the property appraiser  
36 did not establish a presumption of correctness for the assessment. See Subsection  
37 194.301(1), F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

### 40 **Consideration of Previous Year's Board-Adjusted Assessment**

41 Section 193.016, Florida Statutes, provides the following.

42  
43 ***"Property appraiser's assessment; effect of determinations by value adjustment***  
44 ***board. – If the property appraiser's assessment of the same items of tangible personal***  
45 ***property in the previous year was adjusted by the value adjustment board and the***  
46 ***decision of the board to reduce the assessment was not successfully appealed by the***  
47 ***property appraiser, the property appraiser shall consider the reduced values determined***

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by the value adjustment board in assessing those items of tangible personal property. If the property appraiser adjusts upward the reduced values previously determined by the value adjustment board, the property appraiser shall assert additional basic and underlying facts not properly considered by the value adjustment board as the basis for the increased valuation notwithstanding the prior adjustment by the board.”

\* This statute was upheld by the Florida Supreme Court. See Department of Revenue v. Howard, 916 So.2d 640 (Fla. 2005).

### **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).

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

### **Petitioner Not Required to Present Opinion or Estimate of Value**

7 The petitioner is not required to provide an opinion or estimate of just value.

9 No provision of law requires the petitioner to present an opinion or estimate of value.

11 The Board or special magistrate is not authorized to require a petitioner to provide an  
12 opinion or estimate of just value.

14 The petitioner has the option of choosing whether to present an opinion or estimate of  
15 just value.

### **Presentation of Evidence by the Parties**

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

23 Under Subsection 194.301(1), F.S., in a hearing on just value, the first issue to be  
24 considered is whether the property appraiser establishes a presumption of correctness.

26 \* The property appraiser shall present evidence on this issue first. See Rule 12D-  
27 9.024(7), F.A.C.

29 \* While the property appraiser is required to present evidence on this issue first, the  
30 Board or special magistrate must allow the petitioner a chance to present evidence  
31 on this issue before deciding whether the presumption of correctness is established.

33 *"In a Board or special magistrate hearing, the petitioner is responsible for presenting*  
34 *relevant and credible evidence in support of his or her belief that the property*  
35 *appraiser's determination is incorrect."* See Rule 12D-9.025(3)(a), F.A.C.

37 If the property appraiser establishes a presumption of correctness by proving by a  
38 preponderance of the evidence that the just value assessment was arrived at by  
39 complying with Section 193.011, F.S., and professionally accepted appraisal practices,  
40 including mass appraisal standards, if appropriate, the petitioner must prove by a  
41 preponderance of the evidence that:

- 43 1. The property appraiser's just valuation does not represent just value; or
- 45 2. The property appraiser's just valuation is arbitrarily based on appraisal practices that  
46 are different from the appraisal practices generally applied by the property appraiser

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to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

However, if the property appraiser does not establish a presumption of correctness because he or she did not prove by a preponderance of the evidence that the just valuation was arrived at by complying with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the Board or special magistrate must take one of the two following actions:

1. If the record contains competent substantial evidence of just value that cumulatively meets the requirements of Section 193.011, F.S., and professionally accepted appraisal practices, the Board or special magistrate must establish a revised just value; or
2. If the record lacks such competent substantial evidence, the Board or special magistrate must remand the assessment to the property appraiser with appropriate directions with which the property appraiser must comply.

### **Evaluation of Evidence by the Board or Special Magistrate**

Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special magistrate must:

1. Review the evidence presented by the parties;
2. Determine whether the evidence presented is admissible;
3. Admit the evidence that is admissible;
4. Identify the evidence presented to indicate that it is admitted or not admitted; and
5. Consider the admitted evidence.

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

*“No evidence shall be considered by the board or special magistrate except when presented and admitted during the time scheduled for the petitioner’s hearing, or at a time when the petitioner has been given reasonable notice.”* See Rule 12D-9.025(4)(a), F.A.C.

*“If a party submits evidence to the board clerk prior to the hearing, the board or special magistrate shall not review or consider such evidence prior to the hearing.”* See Rule 12D-9.025(4)(b), F.A.C.

Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:



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1. *“As the trier of fact, the board or special magistrate may independently rule on the admissibility and use of evidence.”*
2. *“If the board or special magistrate has any questions relating to the admissibility and use of evidence, the board or special magistrate should consult with the board legal counsel.”*
3. *“The basis for any ruling on admissibility of evidence must be reflected in the record.”*
4. *“The special magistrate may delay ruling on the question during the hearing and consult with board legal counsel after the hearing.”*

The Board or special magistrate shall consider the admitted evidence. See Rule 12D-9.025(1)(d), F.A.C.

A property owner generally is qualified, on account of ownership, to testify regarding the just value of his or her property. See In re Steffen, 342 B.R. 861 (Bkrtcy. M.D. Fla. 2006).

NOTE: More information on the admissibility of evidence is presented in Module 4 of this training.

### **Sufficiency of Evidence**

When applied to evidence, the term “sufficient” is a test of adequacy. See Rule 12D-9.027(6), F.A.C.

Sufficient evidence is admitted evidence that has enough overall weight, in terms of relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6), F.A.C.

The Florida Supreme Court stated the following regarding sufficient evidence: *“Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character, weight, or amount, as will legally justify the judicial or official action demanded.”* See Tibbs v. State, 397 So.2d 1120 (Fla. 1981). Also, see Moore v. State, 800 So.2d 747 (Fla. 5th DCA 2001).

A particular conclusion is justified when the overall weight of the admitted evidence meets the standard of proof that applies to the issue under consideration. See Rule 12D-9.027(6), F.A.C.

The Board or special magistrate must consider the admitted evidence and determine whether it is sufficiently relevant and credible to reach the “preponderance of the evidence” standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-9.027(5), and 12D-9.027(6), F.A.C.

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1 Rule 12D-9.027(6), F.A.C., states the following in pertinent part: *“In determining*  
2 *whether the admitted evidence is sufficient for a particular issue under consideration,*  
3 *the board or special magistrate shall:*

- 4
- 5 (a) *Consider the relevance and credibility of the admitted evidence as a whole,*  
6 *regardless of which party presented the evidence;*
- 7
- 8 (b) *Determine the relevance and credibility, or overall weight, of the evidence;*  
9
- 10 (c) *Compare the overall weight of the evidence to the standard of proof;*  
11
- 12 (d) *Determine whether the overall weight of the evidence is sufficient to reach the*  
13 *standard of proof; and*
- 14
- 15 (e) *Produce a conclusion of law based on the determination of whether the overall*  
16 *weight of the evidence has reached the standard of proof.”*  
17

18 For administrative reviews of just valuations, “relevant evidence” is evidence that is  
19 reasonably related, directly or indirectly, to the statutory criteria that apply to the just  
20 valuation of the petitioned property. See Rule 12D-9.025(2)(b), F.A.C.

21

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

26

27 In evaluating the relevance of evidence, the Board or special magistrate must consider,  
28 as of the January 1 assessment date, how well the evidence relates to the petitioned  
29 property and to the statutory criteria found in Section 193.011, F.S., and in Section  
30 194.301, F.S.

31

32 For administrative reviews of just valuations, “credible evidence” means evidence that is  
33 worthy of belief (believable). See *Black’s Law Dictionary, Eighth Edition*, page 596.

34

35 NOTE: More information on evaluating the relevance and credibility of evidence is  
36 presented in Module 11 of this training.

37

38 By itself, the property record card is not sufficient evidence for establishing a  
39 presumption of correctness for the assessment under Subsection 194.301(1), F.S.

40

41 Materials describing the general appraisal practices of the property appraiser alone,  
42 without discussing how those practices were applied to the assessment at issue, are not  
43 sufficient to establish a presumption of correctness for the assessment. See Property Tax  
44 Informational Bulletin PTO 09-29.

45

46 The approval of an assessment roll by the Department of Revenue is not evidence that  
47 a particular assessment was made in compliance with statutory requirements and is not

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sufficient to establish a presumption of correctness for the assessment. See Property Tax Informational Bulletin PTO 09-29.

### **Requirements for Establishing a Presumption of Correctness**

A presumption of correctness for the assessment is not established unless the property appraiser proves by a preponderance of the evidence that the property appraiser's just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. See Rule 12D-9.027(2)(a), F.A.C.

A presumption of correctness for the assessment is established only when the property appraiser proves by a preponderance of the evidence that the property appraiser's just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

### **Requirements for Overcoming a Presumption of Correctness**

If the property appraiser establishes a presumption of correctness, the petitioner can overcome the presumption of correctness by proving by a preponderance of the evidence one of the following:

1. The property appraiser's just valuation does not represent just value; or
2. The property appraiser's just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

If the property appraiser establishes a presumption of correctness and the petitioner does not overcome the presumption of correctness as described above, the assessment stands.

### **Establishing a Revised Just Value or Remanding the Assessment**

If the property appraiser does not establish a presumption of correctness for the assessment, or if the petitioner overcomes the presumption of correctness, the Board or special magistrate must take one of the two following actions:

1. If the record contains competent substantial evidence of just value that cumulatively meets the requirements of Section 193.011, F.S., and professionally accepted appraisal practices, the Board or special magistrate must establish a revised just value; or

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2. If the record lacks such competent substantial evidence, the Board or special magistrate must remand the assessment to the property appraiser with appropriate directions with which the property appraiser must comply.

NOTE: Information on the procedural requirements for remanded assessments is presented in Module 5 of this training.

### **Competent Substantial Evidence for Establishing a Revised Just Value**

Competent substantial evidence for establishing a revised just value, as part of an administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:

1. Cumulatively meets the criteria of Section 193.011, F.S., and professionally accepted appraisal practices;
2. Tends to prove (is probative of) just value as of January 1 of the assessment year under review;
3. Is sufficiently relevant and credible to be accepted as adequate to support (legally justify) the conclusion reached; and
4. Otherwise meets all requirements of law.

### **Establishment of Revised Just Values in Administrative Reviews**

The Board or special magistrate is required to establish a revised just value under either of the two following conditions:

1. The property appraiser does not establish a presumption of correctness for the assessment and the hearing record contains competent substantial evidence for establishing a revised just value as described above; or
2. The petitioner overcomes a presumption of correctness established by the property appraiser and the hearing record contains competent substantial evidence for establishing a revised just value as described above.

Within their scope of authority, the Board or special magistrate shall establish a revised just value based upon the competent substantial evidence for establishing a revised just value. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

Prior to 2009 and the adoption of House Bill 521, Section 194.301, F.S., provided that the Board may establish the assessment when authorized.

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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 **Legal Limitations on Administrative Reviews**

23 No evidence shall be considered by the Board or special magistrate except when  
24 presented during the time scheduled for the petitioner’s hearing, or at a time when the  
25 petitioner has been given reasonable notice. See Subsection 194.034(1)(c), F.S. Also, see  
26 Rule 12D-9.025(4)(a), F.A.C.

27  
28 Other provisions of law address the responsibilities of petitioners and property  
29 appraisers that may affect the review and consideration of evidence at a hearing.

30  
31 \* The Board or special magistrate must consult with the Board legal counsel on any  
32 questions about the review and consideration of evidence.

33  
34 In administrative reviews, the Board or special magistrate shall not consider the tax  
35 consequences of the valuation of a specific property. See Rule 12D-10.003(1), F.A.C.

36  
37 The Board or special magistrate has no power to grant relief by adjusting the value of a  
38 property on the basis of hardship of a particular taxpayer. See Rule 12D-10.003(1), F.A.C.

39  
40 Unless the provisions of Section 193.016, F.S., apply, a just valuation challenge must  
41 stand or fall on its own validity, unconnected with the just value of any prior or  
42 subsequent year. See Keith Investments, Inc. v. James, 220 So.2d 695 (Fla. 4th DCA 1969);  
43 Also, see Dade County v. Tropical Park, Inc., 251 So.2d 551 (Fla. 3rd DCA 1971).

44  
45 Unless the provisions of Section 193.016, F.S., apply, the prior year’s just value is not  
46 competent evidence of just value in the current year, even when there is no evidence

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1 showing a change in circumstances between the two dates of assessment. See Simpson  
2 v. Merrill, 234 So.2d 350 (Fla. 1970).

### 5 **Sequence of General Procedural Steps**

6 This section sets forth below a sequence of general procedural steps for Boards and  
7 special magistrates to follow in administrative reviews of just valuations in order to fulfill  
8 the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.

9  
10 This sequence of steps applies to: the consideration of evidence, the development of  
11 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

12  
13 *“The board or special magistrate shall not be required to make, at any time during a*  
14 *hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See  
15 Rule 12D-9.025(9), F.A.C.

16  
17 *“The board or special magistrate has the discretion to determine whether to make such*  
18 *determinations during a hearing or to consider the petition and evidence further after the*  
19 *hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.

20  
21 In following this sequence of steps, Boards or special magistrates must also meet the  
22 requirements of Rule 12D-9.025(1), F.A.C., which are the following:

- 23  
24 \* Review the evidence presented by the parties;  
25  
26 \* Determine whether the evidence presented is admissible;  
27  
28 \* Admit the evidence that is admissible; and  
29  
30 \* Identify the evidence presented to indicate that it is admitted or not admitted.

31  
32 The sequence of general procedural steps presented below is based on Rule 12D-  
33 9.027(2), F.A.C. The sequence of general procedural steps is as follows.

- 34  
35 1. Consider the admitted evidence presented by the parties.  
36  
37 2. Identify and consider the essential characteristics of the petitioned property based on  
38 the admitted evidence and the factors in Section 193.011, F.S.  
39  
40 3. Identify the appraisal methodology used by the property appraiser in developing his  
41 or her just valuation of the petitioned property, and consider this appraisal  
42 methodology in light of the essential characteristics of the petitioned property.  
43  
44 4. Determine whether the admitted evidence proves by a preponderance of the  
45 evidence that the property appraiser’s methodology complies with Section 193.011,  
46 F.S., and professionally accepted appraisal practices, including mass appraisal  
47 standards, if appropriate.

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- 1  
2 5. Determine whether the property appraiser's appraisal methodology is appropriate  
3 and whether the property appraiser established a presumption of correctness for the  
4 assessment.  
5  
6 a) The property appraiser's just valuation methodology is not appropriate and a  
7 presumption of correctness is not established unless the admitted evidence  
8 proves by a preponderance of the evidence that the property appraiser's just  
9 valuation methodology complies with Section 193.011, F.S., and professionally  
10 accepted appraisal practices, including mass appraisal standards, if appropriate.  
11  
12 b) The property appraiser's just valuation methodology is appropriate and the  
13 presumption of correctness is established only when the admitted evidence  
14 proves by a preponderance of the evidence that the property appraiser's just  
15 valuation methodology complies with Section 193.011, F.S., and professionally  
16 accepted appraisal practices, including mass appraisal standards, if appropriate.  
17
- 18 6. If the Board or special magistrate determines that a presumption of correctness is  
19 established, the Board or special magistrate must then determine whether the  
20 admitted evidence proves by a preponderance of the evidence that:  
21  
22 a) The property appraiser's just valuation does not represent just value; or  
23  
24 b) The property appraiser's just valuation is arbitrarily based on appraisal practices  
25 that are different from the appraisal practices generally applied by the property  
26 appraiser to comparable property within the same county.  
27
- 28 7. If the Board or special magistrate determines that one or both of the conditions  
29 specified under Step 6 exist, the presumption of correctness is overcome.  
30
- 31 8. If the property appraiser does not establish a presumption of correctness, or if the  
32 presumption of correctness is overcome, the Board or special magistrate must  
33 determine whether the hearing record contains competent, substantial evidence of  
34 just value which cumulatively meets the criteria of Section 193.011, F.S., and  
35 professionally accepted appraisal practices.  
36  
37 a) If the hearing record contains competent, substantial evidence for establishing a  
38 revised just value, the Board or an appraiser special magistrate must establish a  
39 revised just value based only upon such evidence. In establishing a revised just  
40 value, the Board or special magistrate is not restricted to any specific value  
41 offered by one of the parties.  
42  
43 b) If the hearing record lacks competent, substantial evidence for establishing a  
44 revised just value, the Board or special magistrate must remand the assessment  
45 to the property appraiser with appropriate directions for establishing just value.  
46 The property appraiser is required to follow these directions.  
47

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9. If the property appraiser establishes a presumption of correctness as described in Step 5 above and that presumption of correctness is not overcome as described in Step 6 above, the assessment stands.

### **Operation of the Eighth Criterion Under Florida Law**

Subsection 193.011(8), F.S., known as the “eighth criterion,” requires proper consideration of the “net proceeds of sale.” The “eighth criterion” was last amended in 1979 and is presented below in its entirety.

*“The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. 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.”*

Subsection 193.011(8), F.S., requires proper consideration of the “net proceeds of sale” of tangible personal property, regardless of whether an actual sale of the property has occurred. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

However, the statute does not require the property appraiser to select the value generated by the application of Subsection 193.011(8), F.S., and apply it in a blanket fashion to all assessments. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

There is no legal requirement that the net proceeds of sale constitute the deciding factor in just valuation. See In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006).

The use of net sales price alone, without considering and weighing other factors, is legally insufficient to constitute compliance with the mandate of Section 193.011, F.S. See Florida Attorney General’s Opinion [AGO 77-106](#), September 29, 1977.

The eighth criterion must be properly considered in the just valuation of tangible personal property. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

\* In administrative reviews of tangible personal property just valuations, Boards and special magistrates must also properly consider the eighth criterion.

However, Florida law does not provide for the same information regarding the eighth criterion on tangible personal property assessment rolls as for real property rolls.



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1 \* There are no recorded selling prices for tangible personal property as there are for  
2 real property.

3  
4 \* Property appraisers are not required to report selling prices for tangible personal  
5 property to the Department as they are required to do for real property.

6  
7 NOTE: More information on the eighth criterion and the just valuation of tangible  
8 personal property is presented earlier in this module in the section titled "Florida  
9 Information on Appraisal Development."

### 10 11 12 **The Eighth Criterion in Reviews of Tangible Personal Property**

13 In the development of tangible personal property assessment rolls, property appraisers  
14 are responsible for properly considering the eighth criterion in the just valuation of  
15 tangible personal property.

16  
17 In administrative reviews of just valuations of tangible personal property, the parties are  
18 responsible for presenting relevant and credible evidence, in accordance with law,  
19 regarding how the eighth criterion applies to the just valuation of tangible personal  
20 property.

21  
22 Boards and special magistrates are responsible for determining, based on admitted  
23 evidence and in accordance with law, how the eighth criterion applies in administrative  
24 reviews of just valuations of tangible personal property.

## **Module 9: Administrative Reviews of Denials of Exemptions and Property Classifications**

**This training module addresses the following topics:**

### **PART 1: Introduction**

- Overview of Exemptions and Property Classifications
- Applications for Exemptions and Property Classifications
- Denials of Exemptions and Property Classifications
- Scope of Authority for Administrative Reviews
- Overview of Statutory Criteria
- Standard of Proof for Administrative Reviews
- Evaluation of Evidence by the Board or Special Magistrate
- Sufficiency of Evidence

### **PART 2: Administrative Reviews of Denials of Exemptions**

- The Administrative Review Process for Denials of Exemptions
- Statutory Criteria for Exemptions

#### **Statutory Criteria for Different Types of Personal Exemptions**

- Homestead Exemption: Qualifications and Benefits
- Homestead Exemption: Permanent Residence
- Homestead Exemption: Rental
- Homestead Exemption: Additional Exemption for Low Income Seniors
- Homestead Exemption: Save Our Homes
- Homestead Exemption: Damaged or Destroyed Property
- Homestead Exemption: Living Quarters for Parents or Grandparents
- Homestead Exemption: Totally and Permanently Disabled Persons
- Exemptions for Veterans
- Exemption for Veterans: Discount for Disabled Veterans
- Exemption for Deployed Service Members Beginning in 2011
- Exemptions for First Responders Who Were Totally and Permanently Disabled in the Line of Duty, and For Surviving Spouses

#### **Statutory Criteria for Different Types of Institutional Exemptions**

- Government Property
- Exempt Entities
- Lands Used for Conservation Purposes
- Specific Educational Exemptions
- Exemptions for Tangible Personal Property
- Other Exemptions

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### **PART 3: Administrative Reviews of Denials of Property Classifications**

- The Administrative Review Process for Denials of Classifications
- Statutory Criteria for Property Classifications

#### **Statutory Criteria for Different Types of Property Classifications**

- Agricultural Property
  - Agricultural Property: Dispersed Water Storage Programs
  - Agricultural Property: Quarantine and Eradication Programs
  - Agricultural Property: Special Types
- Pollution Control Devices
- Noncommercial Recreation and Conservation Lands
- Historic Property
- Historic Property: Section 193.503, F.S.
- Historic Property: Section 193.505, F.S.
- High-water Recharge Property
- Working Waterfront Property
- Renewable Energy Source Device

#### **Learning Objectives**

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

- Identify what is subtracted from assessed value to arrive at taxable value.
- Recognize the statutory order in which exemptions must be deducted to arrive at taxable value (see Section 196.031, F.S.)
- Recognize that the disabled veterans discount is deducted after exemptions are deducted to arrive at taxable value
- Distinguish between a property classification and classified use value
- Identify the requirements for applications for exemptions and property classifications
- Recognize the requirements for denials of exemptions and property classifications
- Identify the statutory criteria for a valid denial of an exemption by the property appraiser
- Apply the correct procedures for determining whether a denial of an exemption by the property appraiser is valid
- Apply the correct procedures when a denial of an exemption by the property appraiser has been determined to be invalid
- Apply the correct procedures when a denial of an exemption by the property appraiser has been determined to be valid
- Recognize and apply the scope of authority for administrative reviews of denials of exemptions and property classifications
- Identify the items that a Board or special magistrate may consider in addition to admitted evidence
- Recognize that there is no presumption of correctness for a property appraiser's determination on an exemption or classification
- Identify the applicable standard of proof, its definition, and how it is applied
- Identify and apply the steps for evaluating evidence in administrative reviews

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- Recognize and apply the provisions for ruling on the admissibility of evidence
- Identify and apply the definitions of relevant evidence and credible evidence
- Recognize and apply the standards for determining the sufficiency of evidence
- Identify when the Board or special magistrate is required or is NOT required to make determinations such as findings, conclusions, or decisions
- Apply the sequence of general procedural steps for administrative reviews of denials of exemptions
- Apply the sequence of general procedural steps for administrative reviews of denials of property classifications
- Distinguish between the sequence of general procedural steps for administrative reviews of denials of exemptions and the sequence of general procedural steps for administrative reviews of denials of property classifications
- Recognize the conditions under which a Board or special magistrate must grant an exemption or classification
- Recognize the conditions under which a Board or special magistrate must NOT grant an exemption or classification
- Identify and apply the statutory criteria for administrative reviews of denials of 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.

"Property Classification" or "Classification" means a classification of property for assessment purposes according to applicable statutory criteria, including those in Chapter 193, Part II, F.S., and an assessment of the property at its classified use value.

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1 “Classified use value” means the value of a property that is based solely on the  
2 property’s character or use and based on the applicable statutory criteria, without regard  
3 to the property’s highest and best use. See Subsection 192.001(2), F.S.  
4  
5

### **Applications for Exemptions and Property Classifications**

6 A property owner must apply for an exemption by the applicable deadline in order to  
7 receive the exemption. See Subsection 196.011(1)(a), F.S.  
8  
9

10 If a property owner failed to timely file for an exemption, he or she must late file for the  
11 exemption with the property appraiser by the 25th day after the mailing of the notice of  
12 proposed property taxes (TRIM notice).  
13

14 If the property appraiser determines, based on sufficient evidence, that the late filed  
15 exemption was late because the applicant was unable to file timely or there were other  
16 extenuating circumstances, the property appraiser may grant the exemption to an  
17 otherwise qualified applicant for the current year.  
18

19 If the property appraiser does not grant the late filed exemption, the property owner may  
20 appeal to the Board, by the 25th day after the mailing of the notice of proposed property  
21 taxes (TRIM notice).  
22

23 The Board may grant the exemption to an otherwise qualified applicant if it finds the  
24 failure to apply was due to extenuating circumstances. Subsection 196.011(8), F.S.  
25

26 If a postal error resulted in an otherwise eligible applicant not filing on time his or her  
27 application for an exemption, the Board or special magistrate must grant the exemption.  
28 Subsection 196.011(7), F.S.  
29

30 The county may waive the requirement that exemptions be applied for annually and  
31 provide for automatic renewal of some exemptions. Subsection 196.011(9), F.S.  
32

33 \* At the option of the property appraiser, initial or original applications for homestead  
34 exemption for the succeeding year may be accepted and granted after March 1.  
35

36 **Note:** Legislation enacted in 2014 amended section 193.461, F.S., to provide that an  
37 applicant for the agricultural classification who does not file an application by the March  
38 1 filing deadline, can file an application with the property appraiser on or before 25 days  
39 after the property appraiser mails the notice of proposed property taxes (TRIM notice).  
40

41 \* The application must include sufficient evidence that demonstrates the applicant was  
42 unable to apply in a timely manner or otherwise demonstrates extenuating  
43 circumstances warranting the classification.  
44

45 \* The property appraiser may grant the application if he or she determines the  
46 circumstances warrant.  
47

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\* If the applicant files an application for the classification and fails to provide sufficient evidence to the property appraiser as required, the applicant may file a petition with the value adjustment board on or before 25 days after the property appraiser mails the notice of proposed property taxes (TRIM notice).

\* This legislation was effective July 1, 2014 and applies to administrative reviews beginning in 2014. See Chapter 2014-150, Section 2, Laws of Florida (HB 7091).

### **Denials of Exemptions and Property Classifications**

Florida Statutes require that the property appraiser issue in writing a denial of an exemption or classification.

The denial will typically reference missing documentation that, if supplied, could qualify the taxpayer for the exemption or classification.

The petitioner must show that the statutory criteria are satisfied to qualify for an exemption or classification.

If an exemption or classification is denied by the property appraiser, the petitioner must file his or her petition to the Board within 30 days of that notice of denial.

Subsection 196.193(5)(a), F.S., states the following regarding the denial of an exemption:

*"If the property appraiser determines that any property claimed as wholly or partially exempt under this section is not entitled to any exemption or is entitled to an exemption to an extent other than that requested in the application, he or she shall notify the person or organization filing the application on such property of that determination in writing on or before July 1 of the year for which the application was filed."*

Subsection 196.193(5)(b), F.S., provides the following criteria for a valid denial of an exemption by the property appraiser:

1. *"The notification must state in clear and unambiguous language the specific requirements of the state statutes which the property appraiser relied upon to deny the applicant the exemption with respect to the subject property."*
2. *"The notification must be drafted in such a way that a reasonable person can understand specific attributes of the applicant or the applicant's use of the subject property which formed the basis for the denial."*
3. *"The notice must also include the specific facts the property appraiser used to determine that the applicant failed to meet the statutory requirements."*

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Under Subsection 196.193(5)(b), F.S., if a property appraiser fails to provide a notice of denial of an exemption that complies with the criteria stated above, the denial or the attempted denial of the exemption is invalid.

\* Rule 12D-9.027(4)(a), F.A.C., provides the following regarding the administrative review of a denial of an exemption:

*“(a) In the case of an exemption, the board or special magistrate shall consider whether the denial was valid or invalid and shall:*

*1. Review the exemption denial, and compare it to the applicable statutory criteria in Section 196.193(5), F.S.;*

*2. Determine whether the denial was valid under Section 196.193, F.S.; and*

*3. If the denial is found to be invalid, not give weight to the exemption denial or to any evidence supporting the basis for such denial, but shall instead proceed to dispose of the matter without further consideration in compliance with Section 194.301, F.S.”*

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

The administrative review process (done by Boards) is separate and different from the assessment roll production process (done by property appraisers).

The Board's authority is limited to the review of individual petitions filed. See Spooner v. Askew, 345 So.2d 1055 (Fla. 1976).

The Board has the limited function of reviewing and correcting individual determinations of the property appraiser. See Bath Club, Inc. v. Dade County, 394 So.2d 110 (Fla. 1981).

Upon proper filing of a petition, a Board is authorized to conduct an administrative review of a decision by the property appraiser to deny a tax exemption or a property classification.

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

The Board or special magistrate has no power to grant an exemption or property classification not authorized by law. See Rule 12D-10.003(1), F.A.C.

The Board or special magistrate has no power to grant an exemption or property classification on the basis of hardship of a particular taxpayer. See Rule 12D-10.003(1), F.A.C.

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1 In considering a petition for exemption or property classification, the Board or special  
2 magistrate must not consider the ultimate amount of tax required. See Rule 12D-  
3 10.003(1), F.A.C.

4  
5 In administrative reviews regarding exemptions or classifications, Boards and special  
6 magistrates are not authorized to perform any independent factual research into  
7 attributes of the subject property or attributes of the property owner.

8  
9 Boards and special magistrates must follow the provisions of law on the administrative  
10 review of assessments. See Chapter 194, Parts 1 and 3, F.S., and Rule Chapters 12D-9, 12D-  
11 10, and 12D-16, F.A.C.

12  
13 In administrative reviews of denials of exemptions and classifications, Boards and  
14 special magistrates are bound by the same standards as property appraisers. See Rule  
15 12D-10.003(1), Florida Administrative Code. However, when observing this requirement,  
16 Boards and special magistrates must act within their scope of authority.

17  
18 In administrative reviews, Boards and special magistrates are not authorized to consider  
19 any evidence except evidence properly presented by the parties and properly admitted  
20 into the record for consideration. See Rule 12D-9.025(4)(a), F.A.C.

21  
22 In addition to admitted evidence, Boards and special magistrates are authorized to  
23 consider only the following items in administrative reviews.

- 24  
25 1. Legal advice from the Board legal counsel;  
26  
27 2. Information contained or referenced in the Department's Uniform Policies and  
28 Procedures Manual and Accompanying Documents; and  
29  
30 3. Information contained or referenced in the Department's training for value  
31 adjustment boards and special magistrates.

### 32 33 34 **Overview of Statutory Criteria**

35 Boards and special magistrates, with the assistance of the Board attorney, must identify  
36 and follow the provisions of law that pertain to the administrative review of exemptions  
37 and property classifications.

38  
39 These provisions of law include statutory criteria that apply to the particular exemption  
40 or classification under administrative review. Statutory criteria do not include any factor  
41 that is not a conclusive statutory criterion.

42  
43 For purposes of this training module, "statutory criteria" means a set of statutory  
44 requirements that must be satisfied individually, by sufficient admitted evidence, to  
45 legally justify the granting of the exemption or classification by a Board or special  
46 magistrate.



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Where necessary and where the context will permit, the term “statutory criteria” includes any constitutional criteria that do not require implementation by legislation. See Rule 12D-9.027(4)(g), F.A.C.

\* Additional information on the statutory criteria for exemptions is contained in Rule Chapter 12D-7, F.A.C.

The effective date of administrative review is January 1 of the assessment year under review. This is an essential statutory criterion. See Section 192.042, F.S.

### **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 for the Board or special magistrate to conclude that the classification or exemption status assigned to the property is incorrect. See Rule 12D-9.027(5), F.A.C.

The standard of proof that applies in administrative reviews of the classification or exemption status is called “preponderance of the evidence,” which means “greater weight of the evidence.” See Subsection 194.301(2)(d), F.S., and Rule 12D-9.027(5), F.A.C.

For administrative reviews, preponderance of the evidence means greater weight of the evidence or evidence that more likely than not proves the property appraiser’s determination should be overturned and the petition granted. See Gross v. Lyons, 763 So.2d 276 (Fla. 2000).

This standard of proof is the scale by which the Board or special magistrate measures the weight (relevance and credibility) of the admitted evidence.

The taxpayer shall never be required to prove that the property appraiser’s determination is not supported by any reasonable hypothesis of a legal assessment.

There is no presumption of correctness in administrative reviews of the exemption or property classification status of the property. See Subsection 194.301(2)(d), F.S.

The party initiating the challenge has the burden of proving by a preponderance of the evidence that the classification or exemption status assigned to the property is incorrect. See Subsection 194.301(2)(d), F.S.

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### **Evaluation of Evidence by the Board or Special Magistrate**

Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special magistrate must:

1. Review the evidence presented by the parties;
2. Determine whether the evidence presented is admissible;
3. Admit the evidence that is admissible;
4. Identify the evidence presented to indicate that it is admitted or not admitted; and
5. Consider the admitted evidence.

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

*“No evidence shall be considered by the board or special magistrate except when presented and admitted during the time scheduled for the petitioner’s hearing, or at a time when the petitioner has been given reasonable notice.”* See Rule 12D-9.025(4)(a), F.A.C.

*“If a party submits evidence to the board clerk prior to the hearing, the board or special magistrate shall not review or consider such evidence prior to the hearing.”* See Rule 12D-9.025(4)(b), F.A.C.

Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:

1. *“As the trier of fact, the board or special magistrate may independently rule on the admissibility and use of evidence.”*
2. *“If the board or special magistrate has any questions relating to the admissibility and use of evidence, the board or special magistrate should consult with the board legal counsel.”*
3. *“The basis for any ruling on admissibility of evidence must be reflected in the record.”*
4. *“The special magistrate may delay ruling on the question during the hearing and consult with board legal counsel after the hearing.”*

NOTE: More information on the admissibility of evidence is presented in Module 4.

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### **Sufficiency of Evidence**

When applied to evidence, the term “sufficient” is a test of adequacy. See Rule 12D-9.027(6), F.A.C.

Sufficient evidence is admitted evidence that has enough overall weight, in terms of relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6), F.A.C.

The Florida Supreme Court stated the following regarding sufficient evidence: *“Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character, weight, or amount, as will legally justify the judicial or official action demanded.”* See Tibbs v. State, 397 So.2d 1120 (Fla. 1981). Also, see Moore v. State, 800 So.2d 747 (Fla. 5th DCA 2001).

A particular conclusion is justified when the overall weight of the admitted evidence meets the standard of proof that applies to the issue under consideration. See Rule 12D-9.027(6), F.A.C.

The Board or special magistrate must consider the admitted evidence and determine whether it is sufficiently relevant and credible to reach the “preponderance of the evidence” standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-9.027(5), and 12D-9.027(6), F.A.C.

Rule 12D-9.027(6), F.A.C., states the following in pertinent part: *“In determining whether the admitted evidence is sufficient for a particular issue under consideration, the board or special magistrate shall:*

- (a) Consider the relevance and credibility of the admitted evidence as a whole, regardless of which party presented the evidence;*
- (b) Determine the relevance and credibility, or overall weight, of the evidence;*
- (c) Compare the overall weight of the evidence to the standard of proof;*
- (d) Determine whether the overall weight of the evidence is sufficient to reach the standard of proof; and*
- (e) Produce a conclusion of law based on the determination of whether the overall weight of the evidence has reached the standard of proof.”*

For administrative reviews of denials of exemptions and classifications, “relevant evidence” is evidence that is reasonably related, directly or indirectly, to the statutory criteria that apply to the petitioned property or the property owner, as applicable. See Rule 12D-9.025(2)(b), F.A.C.

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

In evaluating the relevance of evidence, the Board or special magistrate must consider, as of the January 1 assessment date, how well the evidence relates to the petitioned property or the property owner, as applicable, and to the statutory criteria that apply.

For administrative reviews, “credible evidence” means evidence that is worthy of belief (believable). See *Black’s Law Dictionary, Eighth Edition*, page 596.

NOTE: More information on evaluating the relevance and credibility of evidence is presented in Module 11 of this training.

### **PART 2: Administrative Reviews of Denials of Exemptions**

The sections below contain information on the administrative review of denials of exemptions, including information on the statutory criteria for exemptions.

#### **The Administrative Review Process for Denials of Exemptions**

Set forth below is a sequence of general procedural steps for Boards and special magistrates to follow in administrative reviews of denials of exemptions in order to fulfill the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(4), F.A.C.

This sequence of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

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

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

Under Rule 12D-9.027(4), F.A.C., in administrative reviews of denials of exemptions, the Board or special magistrate shall follow this sequence of general procedural steps:

1. In the case of an exemption, the Board or special magistrate shall consider whether the denial was valid or invalid and shall:

- \* Review the exemption denial, and compare it to the applicable statutory criteria in Section 196.193(5), F.S.;

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- \* Determine whether the denial was valid under Section 196.193, F.S.; and
- \* If the exemption denial is found to be invalid, not give weight to the exemption denial or to any evidence supporting the basis for such denial, but shall instead proceed to dispose of the matter without further consideration in compliance with Section 194.301, F.S.

2. If the exemption denial is found to be valid, the Board or special magistrate shall proceed with the following steps:

- \* Consider the admitted evidence presented by the parties;
- \* Identify the particular exemption issue that is the subject of the petition;
- \* Identify the statutory criteria that apply to the particular exemption that was identified as the issue under administrative review;
- \* Identify and consider the essential characteristics of the petitioned property or the property owner, as applicable, based on the statutory criteria that apply to the issue under administrative review;
- \* Identify and consider the basis used by the property appraiser in issuing the exemption denial for the petitioned property; and
- \* Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's denial is incorrect and the exemption should be granted because all of the applicable statutory criteria are satisfied.

The Board or special magistrate must decide whether the admitted evidence, regardless of which party presented the evidence, has sufficient weight (in relevance and credibility) to legally justify overturning the property appraiser's original determination and granting the exemption.

If the admitted evidence proves the petitioner's case by the greater weight of the evidence, the original determination must be overturned and the petition granted.

If the admitted evidence does not legally justify overturning the property appraiser's original determination, the determination must be upheld.

### **Statutory Criteria for Exemptions**

This section contains information regarding the statutory criteria that must be met to qualify for the various exemptions available in Florida.

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- \* In the case of the more common exemptions, this training presents more detail on the applicable statutory criteria.
- \* Less common exemptions will simply be mentioned so that users of this training are aware of their existence, and a citation will be provided so users can read the statutory criteria when one of the less common exemptions arises.

### **Statutory Criteria for Different Types of Personal Exemptions**

The statutory criteria that apply to several types of personal exemptions are presented below under their respective headings.

#### **Homestead Exemption: Qualifications and Benefits**

Homestead is established on January 1 of each tax year. In order to qualify for the homestead exemption an individual must:

- \* Have legal or beneficial title to the property which is demonstrated by a deed or instrument on file in the public records; and
- \* Make the property their permanent residence, or the permanent residence of a person legally or naturally dependent upon the individual.

Homestead property receives:

- \* An exemption of \$25,000 from all levies.
- \* An additional exemption of up to \$25,000 on the assessed valuation greater than \$50,000 for all levies other than school district levies.
- \* A limitation on assessments under the Save Our Homes provisions.
- \* Eligibility for additional exemptions that are available only on homestead properties. See section 196.031, F.S.

See also Rule 12D-7.0142, F.A.C.

#### **Homestead Exemption: Permanent Residence**

Permanent residence means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning.

A person may have only one permanent residence at a time, and once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred. See section 196.012(18), F.S.

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1  
2 Intention to establish a permanent residence in Florida is a factual determination to be  
3 made, in the first instance, by the property appraiser.

4  
5 Section 196.015, F.S., provides factors the property appraisers may consider in making  
6 this determination.

7  
8 Although any one factor is not conclusive of the establishment or non-establishment of  
9 permanent residence, the following are relevant factors that may be considered by the  
10 property appraiser in making his or her determination about the intent of a person  
11 claiming a homestead exemption to establish a permanent residence in Florida:

- 12  
13 \* Formal declaration of domicile by the applicant recorded in the public records of the  
14 county where the exemption is sought;  
15  
16 \* Where the applicant's dependent children are registered for school;  
17  
18 \* The place of employment of the applicant;  
19  
20 \* The previous permanent residency by the applicant in a state other than Florida or in  
21 another country and the date non-Florida residency was terminated;  
22  
23 \* Proof of voter registration at the place for which the exemption is being sought;  
24  
25 \* A valid Florida driver's license or identification card and evidence of relinquishment  
26 of driver's license from another state;  
27  
28 \* The issuance of a license tag on any motor vehicle owned by the applicant;  
29  
30 \* The address as listed on federal income tax returns filed by the applicant;  
31  
32 \* The location where the applicant's bank statements and checking accounts are  
33 registered; and  
34  
35 \* Proof of payment of utilities at the location where residence is being claimed.  
36 See section 196.015, F.S.

### 37 38 39 **Homestead Exemption: Rental**

40 See section 196.061, F.S.

41 Rental of an entire dwelling previously claimed to be a homestead for tax purposes  
42 constitutes abandonment of the dwelling as a homestead, when the property is rented  
43 for more than 30 days per calendar year for two consecutive years.

44  
45 Abandonment continues until the dwelling is physically occupied by the owner.  
46

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**Note:** Legislation enacted in 2013 provides that rental of the homestead after January 1 of any year does not affect the homestead exemption for tax purposes for that particular year unless the property is rented for more than 30 days per calendar year for two consecutive years. These changes were effective July 1, 2013, and apply to assessments and administrative reviews beginning in 2014. See Chapter 2013-64, Laws of Florida (SB 342).

This provision does not apply to a member of the Armed Forces of the United States whose service in such forces is the result of a mandatory obligation imposed by the federal Selective Service Act or who volunteers for service as a member of the Armed Forces of the United States.

### **Homestead Exemption: Additional Exemption for Low Income Seniors**

The Board of County Commissioners of a county or the governing authority of a municipality may adopt an ordinance to allow an additional homestead exemption of up to \$50,000 for any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, and who:

- \* Has the legal or equitable title to real estate;
- \* Uses that real estate as their permanent residence;
- \* Is age 65, or older; and
- \* Whose household income does not exceed \$20,000, adjusted annually, beginning January 1, 2001, by the percentage change in the average cost-of-living index.

For the 2015 assessment year, the 2014 adjusted gross household income to qualify for this exemption is \$28,448 or less.

For the 2016 assessment year, the 2015 adjusted gross household income to qualify for this exemption is \$28,482 or less.

For the 2017 assessment year, the 2016 adjusted gross household income to qualify for this exemption is \$28,841 or less.

[For the 2018 assessment year, the 2017 adjusted gross household income to qualify for this exemption is \\$29,454 or less. See section 196.075, F.S., and Rule 12D-7.0143, F.A.C.](#)

**Note:** An amendment approved by the voters in the November 2012 general election added a local option of up to an additional \$50,000 exemption for low income seniors that have maintained a permanent residence on the property for at least 25 years. See section 196.075, F.S.

### **Homestead Exemption: Save Our Homes**

Relating to exemptions, the primary limitation on assessment increases is the Save Our Homes Amendment limitation which caps assessment increases on homestead



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property at the lesser of 3 percent or the percentage change in the consumer price index.

When applied to the just value assessment in the initial year when homestead is established, any subsequent increases in that assessment are capped.

Property is reassessed on the transfer of the homestead property.

### **Homestead Exemption: Damaged or Destroyed Property**

See section 193.155(4), F.S.

A homestead exemption may be granted to damaged or destroyed property that is otherwise qualified if the property owner notifies the property appraiser that he or she intends to repair or rebuild the property and live in the property as his or her primary residence after the property is repaired or rebuilt and does not claim a homestead exemption on any other property.

Failure by the property owner to begin the repair or rebuilding of the homestead property within three years after January 1 following the year the property was damaged or destroyed constitutes abandonment of the property as a homestead.

Changes, additions, or improvements that replace all or a portion of homestead property damaged or destroyed by misfortune or calamity shall not increase the homestead property's assessed value when:

- \* The square footage of the homestead property as changed or improved does not exceed 110 percent of the square footage of the homestead property before the damage or destruction; or

- \* The total square footage of the homestead property as changed or improved does not exceed 1,500 square feet.

### **Homestead Exemption: Living Quarters for Parents or Grandparents**

This exemption is found in Section 193.703, F.S. It applies to construction or reconstruction of a homestead intended to provide living quarters for the owner's parent or grandparent.

The qualifications for this exemption are:

- \* The parent or grandparent must be 62 or older;
- \* The parent or grandparent must be the natural or adoptive parent or grandparent of an owner of the homestead or of an owner's spouse;
- \* Application must be made by March 1;
- \* Reconstruction or construction must have been made to an existing homestead property; and

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- \* The parent or grandparent must make their primary place of residence on the property and cannot qualify for a separate homestead exemption.

If a taxpayer qualifies under the statute, the exemption from taxation is limited to an amount not to exceed:

- \* Twenty percent of the total assessed value of the property as improved; or
- \* The increase in value resulting from the construction or reconstruction.

### **Homestead Exemption: Totally and Permanently Disabled Persons**

See section 196.101, F.S.

In order to qualify for a total exemption on their homestead a person must have a qualifying household income (the 2014 household income cannot exceed \$27,732 for the 2015 assessment year, the 2015 household income cannot exceed \$27,765 for the 2016 assessment year, [the 2016 household income cannot exceed \\$28,115 for the 2017 assessment year, and the 2017 household income cannot exceed \\$28,713 for the 2018 assessment year](#)) and the applicant must be:

- \* Paraplegic;
- \* Hemiplegic;
- \* Legally blind; or
- \* Totally and permanently disabled and dependent on a wheelchair for mobility.

Persons who are quadriplegic qualify for a total exemption on their homestead without meeting the income limitation.

Totally and permanently disabled persons who do not qualify for a total exemption can receive a \$500 exemption under Section 196.202, F.S. This \$500 exemption is also granted to widows, widowers, and blind persons.

### **Exemptions for Veterans**

See sections 196.081, 196.082, 196.091, and 196.24, F.S.

Any ex-service member (or qualified surviving spouse) who meets the three criteria below shall receive a \$5,000 exemption on their property:

- \* Is a bona fide resident of the state;
- \* Was discharged under honorable conditions; and
- \* Has been disabled to a degree of 10 percent or higher.

Any ex-service member (or qualified surviving spouse) requiring specially adapted housing and required to use a wheelchair for his or her transportation shall be exempt from taxation on his or her homestead when he or she meets the following criteria:

- \* Was honorably discharged with a service-connected total disability certificate; and

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\* Is receiving or has received "special pecuniary assistance".

Any totally and permanently disabled veteran or qualified surviving spouse shall be exempt from taxation on his or her homestead when he or she meets the following criteria:

\* Was honorably discharged with a service-connected total and permanent disability;

\* Was issued a letter from the United States Government or United States Department of Veterans Affairs or its predecessor certifying that the veteran is totally and permanently disabled; and

\* Was a permanent resident of the State of Florida on January 1 of the year in which the exemption is being claimed (or was a permanent resident on January 1 of the year of their death).

This exemption is also granted to the qualified surviving spouse of a veteran who dies during active duty from service-connected causes provided that the veteran was a permanent resident of the State of Florida on January 1 of the year he or she died.

**Note:** Legislation enacted in 2018 amended section 196.24, F.S., relating to qualification for an exemption, to remove the statutory requirement for an unremarried surviving spouse to have been married to a disabled veteran for at least five years on the date of the veteran's death. See Chapter 2018-118, Section 16, Laws of Florida (CS/HB 7087).

### **Exemption for Veterans: Discount for Disabled Veterans**

See section 196.082, F.S.

In addition to the exemptions listed previously, there is a discount on taxes due on homestead property available to disabled veterans. In order to qualify, the veteran must meet the following criteria:

\* Be 65 or older;

\* Have a combat-related disability; and

\* Have been honorably discharged.

When a veteran is qualified, the property appraiser shall apply all exemptions to which the veteran is entitled to the property value, calculate the taxes due on the property, and then reduce the taxes due by the veteran's percentage of disability.

### **Exemption for Deployed Servicemembers Beginning in 2011**

The 2011 Legislature enacted an exemption for certain servicemembers who receive a homestead exemption and who are deployed in certain military operations to receive an additional ad valorem tax exemption.

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\* The percentage exempt under the exemption is calculated as the number of days the servicemember was deployed during the previous calendar year, divided by the number of days in that year, multiplied by 100.

\* It applies to both the school and county taxable values, and applies beginning in the 2011 tax year.

\* See Chapter 2011-93, Laws of Florida (effective May 31, 2011), creating Section 196.173, F.S.

\* See also Rule 12D-7.0055, F.A.C.

**Note:** The 2018 Legislature amended section 196.173, F.S., relating to the exemption for deployed servicemembers, to provide a December 31, 2014, ending date for Operation Enduring Freedom which began on October 7, 2001. The amendment also removed Operation New Dawn, which began on September 1, 2010, and ended on December 15, 2011, and the amendment removed Operation Odyssey Dawn, which began on March 19, 2011, and ended on October 31, 2011. This legislation retained the following military operations on the list:

- Operation Joint Task Force Bravo, which began in 1995.
- Operation Joint Guardian, which began on June 12, 1999.
- Operation Noble Eagle, which began on September 15, 2001.
- Operation Enduring Freedom, which began on October 7, 2001, and ended on December 31, 2014.
- Operations in the Balkans, which began in 2004.
- Operation Nomad Shadow, which began in 2007.
- Operation U.S. Airstrikes Al Qaeda in Somalia, which began in January 2007.
- Operation Copper Dune, which began in 2009.
- Operation Georgia Deployment Program, which began in August 2009.
- Operation Spartan Shield, which began in June 2011.
- Operation Observant Compass, which began in October 2011.
- Operation Inherent Resolve, which began on August 8, 2014.
- Operation Atlantic Resolve, which began in April 2014.
- Operation Freedom's Sentinel, which began on January 1, 2015.
- Operation Resolute Support, which began in January 2015.

See Chapter 2018-118, Section 15, Laws of Florida (CS/HB 7087).

- This exemption is also available to servicemembers who were deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of a subordinate operation to a main operation designated in section 196.173(2), F.S.

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### **Exemptions for First Responders Who Were Totally and Permanently Disabled in the Line of Duty, and For Surviving Spouses**

Section 196.081, F.S., provides an exemption for surviving spouses of first responders who die in the line of duty. See Chapter 2012-54, Laws of Florida (CS/HB 95).

**Note:** Legislation enacted in 2017 created section 196.102, F.S., to: provide an exemption for certain first responders whose total and permanent disability occurred in the line of duty, and for surviving spouses; extend the exemption application deadline for 2017 to August 1, 2017, or later if extenuating circumstances are shown; and provide for petitions to the value adjustment board for denials of such exemptions. This change was effective June 14, 2017, and applies to assessments and administrative reviews beginning in 2017. See Chapter 2017-105, Sections 2 and 3, Laws of Florida (CS/HB 455).

### **Statutory Criteria for Different Types of Institutional Exemptions**

These exemptions apply to property other than homestead property. The exemption can be based either on the ownership of the property, such as governmental property, or the use of the property, such as educational exemptions.

Because of the number of these exemptions, most of the exemptions will not be discussed in detail. Instead a statutory reference will be provided so the requirements of that exemption can be found easily.

The statutory criteria that apply to several types of personal exemptions are presented below under their respective headings.

#### **Government Property**

See section 196.199, F.S.

Governmental property can be immune to taxation, exempt from taxation, or taxable.

Property that is immune from taxation is property that the taxing authority has no ability to tax.

Property that is exempt is property that the state, through its constitution, statutes, and local ordinances, has chosen not to tax.

Property belonging to the federal government is immune from taxation.

State and county property is also immune from taxation and cannot be taxed unless immunity has been waived.

Municipal property and property belonging to most special districts is exempt from taxation as long as it is being used for municipal or other exempt purposes.

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**Note:** Legislation enacted in 2014 moved the exemption for special districts to newly created section 189.055, F.S., from section 189.403, F.S. See Chapter 2014-22, Section 53, Laws of Florida (SB 1632).

Governmental property leased to non-governmental entities may become taxable under section 196.199, F.S.

**Note:** Legislation enacted in 2018 amended section 163.01, F.S. to clarify that the property tax exemption in this statute applies whether the property is within or outside the jurisdiction of the legal entity that owns it. The amendment also clarifies that the exemption applies regardless of whether the legal entity enters into agreements with private entities to manage, operate or improve the utilities the separate entity owns. See Chapter 2018-118, Section 7, Laws of Florida (CS/HB 7087).

**Note:** Legislation enacted in 2015 added section 196.199(1)(a)2., F.S., to provide an ad valorem tax exemption for a leasehold interest in and improvements affixed to land owned by the United States, any branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States if the leasehold and improvements are acquired or constructed and used pursuant to the federal Military Housing Privatization Initiative of 1996. Any such leasehold interest and improvements are exempt from ad valorem taxation regardless of whether title is held by the United States and without necessity of filing an application for the exemption or receiving approval from the property appraiser. This act defines "improvements" to include actual housing units and any facilities that are directly related to such housing units, including any housing maintenance facilities, housing rental and management offices, parks and community centers, and recreational facilities. This law applies retroactively to January 1, 2007. See Chapter 2015-80, Section 1, Laws of Florida (CS for CS for HB 361).

### **Exempt Entities**

See Sections 196.192, 196.193, 196.194, 196.195, and 196.196, F.S.

Exempt entities are nonprofit ventures which serve a charitable, religious, scientific, or literary purpose.

All property owned by an exempt entity and used exclusively for an exempt purpose is totally exempt.

Property owned by an exempt entity and used primarily for an exempt purpose is exempt to the extent that the ratio of such predominate use bears to the non-exempt use.

Tangible personal property loaned to an exempt entity for public display or exhibition on a recurring schedule for no, or nominal, consideration, is exempt.

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### **Lands Used for Conservation Purposes**

Section 196.26, F.S., provides a new exemption for the 2010 tax year for “real property dedicated in perpetuity for conservation purposes”.

In order to qualify for this exemption, the parcel of land must:

- \* Be subject to an easement which dedicates the land in perpetuity for conservation purposes; and
- \* Be at least 40 acres in size or “fulfill a clearly delineated state conservation policy and yield a significant public benefit”.

If the land is used exclusively for conservation purposes it is exempt from ad valorem taxation.

If the land is used for allowed commercial purposes, the land receives an exemption equal to 50 percent of the land’s assessed value.

**Note:** Legislation was enacted in 2016 to amend section 196.011(6)(b), F.S., to provide that once the property appraiser has granted an original application for this exemption, the property owner is not required to file a renewal application until the property’s use no longer complies with the restrictions and requirements of the conservation easement. See Chapter 2016-110, Laws of Florida (CS/SB 190).

### **Specific Educational Exemptions**

Charter school property receives an exemption in Section 196.1983, F.S.

**Note:** Legislation enacted in 2017 amended section 196.1983, F.S., to clarify provisions requiring landlords to reduce lease payments made by charter schools so that the schools receive the full benefit derived by the landlord from the exemption, effective retroactively to January 1, 2017. See Chapter 2017-36, section 7, Laws of Florida (HB 7109).

Gold Seal Quality Child Care Centers are exempt as educational institutions. Section 402.26, F.S.

College sororities and fraternities can be exempt under section 196.198, F.S.

Section 196.198, F.S., also specifically exempts sheltered workshops providing rehabilitation and retraining to disabled individuals.

**Note:** Legislation enacted in 2013 amended Section 196.198, F.S, to include an additional form of ownership that qualifies for the educational property exemption.



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- 1 \* Property used exclusively for educational purposes is deemed owned by an  
2 educational institution and qualifies for the educational property exemption if the  
3 entity that owns 100 percent of the educational institution and the entity that owns  
4 the property are owned by the identical natural persons.  
5  
6

### **Exemptions for Tangible Personal Property**

7 Beginning in 2008, the first \$25,000 of tangible personal property listed on each return  
8 is exempt. See section 196.183, F.S.  
9

- 10  
11 \* See also Rule 12D-7.019, F.A.C.  
12

13 Household goods and personal effects are exempt. See section 196.181, F.S.  
14

15 Inventory is exempt. See section 196.185, F.S.  
16

17 **Note:** Legislation enacted in 2017 amended section 192.001(11)(c), F.S., to clarify that  
18 the term “inventory” includes specified construction and agricultural equipment weighing  
19 1,000 pounds or more that is returned to a dealership under a rent-to-purchase option  
20 and held for sale to customers in the ordinary course of business. This change was  
21 effective July 1, 2017, and applies to assessments and administrative reviews beginning  
22 in 2018. See Chapter 2017-36, Sections 2 and 59, Laws of Florida (HB 7109).  
23  
24

### **Other Exemptions**

25 Labor organization property. See section 196.1985, F.S.  
26

27  
28 Affordable housing. See section 196.1978, F.S.  
29

30 **Note:** Legislation enacted in 2017 amended section 196.1978(2), F.S., to provide a 50  
31 percent discount on property taxes for specified portions of certain multifamily properties  
32 that offer affordable housing to specified low-income persons and families, if application  
33 is made by March 1. This amendment also specifies procedures for the application of  
34 the discount and provides conditions for the termination of the discount. The  
35 amendment is effective starting in 2018. See Chapter 2017-36, section 6, Laws of Florida  
36 (HB 7109).  
37

38 Community centers. See section 196.1986, F.S.  
39

40 Historic properties. See section 196.1997, F.S.  
41

42 Historic properties open to the public. See section 196.1998, F.S.  
43

44 Not for profit sewer and water companies. See section 196.2001, F.S.  
45



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Section 501(c)(12), I.R.C., not-for-profit water and wastewater systems. See section 196.2002, F.S.

Historic property used for certain commercial or nonprofit purposes. See section 196.1961, F.S.

New and expanding businesses. See section 196.1995, F.S.

Renewable energy source devices. See section 196.182, F.S.

**Note:** Legislation enacted in 2017 created section 196.182, F.S., to provide an exemption, from the tangible personal property tax, of 80 percent of the assessed value of certain renewable energy source devices, if the device, as defined in s. 193.624, is considered tangible personal property and:

- (a) Is installed on real property on or after January 1, 2018;
- (b) Was installed before January 1, 2018, to supply a municipal electric utility located within a consolidated government; or
- (c) Was installed after August 30, 2016, on municipal land as part of a described project supplying a municipal electric utility for certain purposes.

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

**Note:** Legislation enacted in 2014 amended section 196.1995, F.S., to provide that, in order to qualify for the economic development exemption, the improvements to real property must be made or the tangible personal property must be added or increased after approval by motion or resolution of the local governing body, subject to ordinance adoption, or on or after the day the ordinance is adopted.

\* This legislation was effective May 12, 2014, and applies to assessments and administrative reviews beginning in 2015. See Chapter 2014-40, Section 1, Laws of Florida (HB 7081).

**Note:** Legislation enacted in 2016 amended sections 196.012 and 196.1995, F.S., to provide:

- 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.

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- 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).

Space laboratories and carriers. See section 196.1999, F.S.

Biblical history display. See section 196.1987, F.S.

Hospitals, nursing homes, and homes for special services. See section 196.197, F.S.

**Note:** Legislation enacted in 2017 amended section 196.012(9), F.S., to include in the terms "nursing home" or "home for special services," institutions that possess a valid license under Chapter 429, Part I, F.S., and to make this amendment applicable to the 2017 property tax roll. This change was effective May 25, 2017 and applies to assessments and administrative reviews beginning in 2017. See Chapter 2017-36, Sections 3 and 4, Laws of Florida (HB 7109).

Nonprofit homes for the aged. See section 196.1975, F.S.

**Note:** Legislation enacted in 2017 amended section 196.1975(4)(c), F.S., to provide that a not-for-profit corporation applying for an exemption for units or apartments under paragraph (4)(a) of the statute must file, with the application, an affidavit from each person who occupies a unit stating the person's income; the corporation is not required to provide an affidavit from a resident who is a totally and permanently disabled veteran who meets the requirements of s. 196.081, F.S. The amendment also provides that, if the property appraiser determines that additional documentation proving an affiant's income is necessary, the property appraiser may request it. This change was effective July 1, 2017, and applies to assessments and administrative reviews beginning in 2018. See Chapter 2017-36, Sections 5 and 59, Laws of Florida (HB 7109).

Proprietary continuing care facilities. See section 196.1977, F.S.

Licensed child care facilities located in an enterprise zone. See section 196.095, F.S.

**PART 3: Administrative Reviews of Denials of Property Classifications**

The Florida Constitution provides for certain “classifications” of property for assessment purposes.

“Property Classification” or “Classification” means a classification of property for assessment purposes according to applicable statutory criteria, including those in Chapter 193, Part II, F.S., and an assessment of the property at its classified use value.

“Classified use value” means the value of a property that is based solely on the property’s character or use and based on the applicable statutory criteria, without regard to the property’s highest and best use. See section 192.001(2), F.S.

The sections below contain information on the administrative review of denials of classifications, including information on the statutory criteria for classifications.

**The Administrative Review Process for Denials of Classifications**

Set forth below is a sequence of general procedural steps for Boards and special magistrates to follow in administrative reviews of denials of classifications in order to fulfill the procedural requirements of section 194.301, F.S., and Rule 12D-9.027(4), F.A.C.

This sequence of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

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

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

Under Rule 12D-9.027(4), F.A.C., in administrative reviews of denials of classifications, the Board or special magistrate shall follow this sequence of general procedural steps:

1. Consider the admitted evidence presented by the parties;
2. Identify the particular property classification issue that is the subject of the petition;
3. Identify the statutory criteria that apply to the property classification that was identified as the issue under administrative review;

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4. Identify and consider the essential characteristics of the petitioned property or the property owner, as applicable, based on the statutory criteria that apply to the issue under administrative review;
5. Identify and consider the basis used by the property appraiser in issuing the denial of property classification for the petitioned property; and
6. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's denial is incorrect and the property classification should be granted because all of the applicable statutory criteria are satisfied.

The Board or special magistrate must decide whether the admitted evidence, regardless of which party presented the evidence, has sufficient weight (in relevance and credibility) to legally justify overturning the property appraiser's original determination and granting the property classification.

If the admitted evidence proves the petitioner's case by the greater weight of the evidence, the original determination must be overturned and the petition granted.

If the admitted evidence does not legally justify overturning the property appraiser's original determination, the determination must be upheld.

### **Statutory Criteria for Property Classifications**

The following sections of this module contain information on the statutory criteria that must be met to qualify for the property classifications available in Florida.

- \* In the case of the more common classifications, this training presents more detail on the applicable statutory criteria.
- \* Information on less common classifications not specifically addressed in this training can be found in Chapter 193, Part 2, F.S.

### **Statutory Criteria for Different Types of Property Classifications**

Statutory criteria for the following types of property classifications are presented below.

#### Types of Property Classifications

- Agricultural Property
- Pollution Control Devices
- Noncommercial Recreational and Conservation Lands
- Historic Property
- High-water Recharge Property
- Working Waterfront Property
- Renewable Energy Source Device

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### **Agricultural Property**

Authorized in Article VII, Section 4(a), of the Florida Constitution.

The agricultural classification is governed by sections 193.451, 193.461, 193.4615, and 193.462, F.S.

The property owner must apply for classification as agricultural property by March 1. However, section 193.462, Florida Statutes, allows the Board to grant the classification even when an application was not made by the statutory deadline.

Qualifying property must be used for “bona fide agricultural purposes,” meaning good faith commercial usage. In determining bona fide agricultural use, the property appraiser may consider the following factors: See section 193.461(3)(b)1., F.S.

- a. The length of time the land has been utilized for bona fide agricultural purposes;
- b. Whether the use has been continuous;
- c. The purchase price paid;
- d. Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment;
- e. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices;
- f. Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease; and
- g. Such other factors as may become applicable.

“Agricultural Purposes” include but are not limited to: See section 193.461(5), F.S.

- \* Horticulture
- \* Floriculture
- \* Viticulture
- \* Forestry
- \* Dairy
- \* Livestock
- \* Poultry
- \* Bees
- \* Pisciculture (when the land is used primarily for the production of tropical fish)

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- \* Aquaculture
- \* Sod Farming
- \* All forms of farm products as defined in section 823.14(3), F.S., and farm production

Under section 193.461(3)(e), F.S., land that has received an agricultural classification from the value adjustment board or a court of competent jurisdiction is entitled to receive such classification in any subsequent year until: such agricultural use of the land is abandoned or discontinued; the land is diverted to a nonagricultural use; or the land is reclassified as nonagricultural pursuant to section 193.461(4), F.S.

\* In Tilton v. Gardner, 52 So.3d 771 (Fla. 5th DCA 2010), the court, in reviewing a denial of an agricultural classification that had been granted by the value adjustment board in a prior assessment year under subsection 193.461(3)(e), F.S., applied the physical activity test in determining whether record evidence was sufficient to justify continuing the agricultural classification.

- \* The Florida Supreme Court has held that the key to determining whether an agricultural classification should be granted is the actual physical activity on the land. See Schultz v. Love PGI Partners, LP, 731 So.2d 1270, 1271 (Fla. 1999). Also, see Straughn v. Tuck, 354 So.2d 368, 370 (Fla. 1977).

### **Agricultural Property: Dispersed Water Storage Programs**

- \* Legislation enacted in 2014 amended Section 193.461, F.S., to provide that agricultural lands that participate in a dispersed water storage program under a contract with the Department of Environmental Protection or a water management district, which requires flooding of land, will retain the agricultural classification as long as the lands are included in the program or successor programs.
- \* The property appraiser will assess these lands as nonproductive agricultural lands.
- \* Lands that participate and are diverted from an agricultural use to a nonagricultural use shall be assessed under Section 193.011, F.S.

### **Agricultural Property: Quarantine and Eradication Programs**

Agricultural land taken out of production due to a state or federal quarantine or eradication program shall continue to be classified as agricultural property for the duration of such program or successor program. See Section 193.461(7), F.S.

- \* If the land in the program lies fallow or is used for non-income producing purposes, the land shall have a de minimus value of no more than \$50 per acre.
- \* If the land in the program is used for another permissible agricultural use, the land shall be assessed based on that usage.

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\* If the land is converted to a nonagricultural use, it will be assessed as nonagricultural property under section 193.011, F.S.

**Note:** Legislation enacted in 2016 amended section 193.461(7)(a), F.S., to provide that lands classified for assessment purposes as agricultural lands that a state or federal eradication or quarantine program takes out of production will remain agricultural lands for the remainder of the program. Lands that these programs convert to nonincome-producing uses will continue to be assessed at a minimum value of up to \$50 per acre on a single-year assessment methodology.

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

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

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

**Note:** Legislation enacted in 2018 created section 193.461(7)(c), F.S., to require agricultural lands that incur damage from a natural disaster, for which the Governor declares a state of emergency and results in halting agricultural production, to be classified as agricultural lands for five years following termination of the emergency declaration. However, if the lands are diverted from agricultural use to nonagricultural use during or after the five-year recovery period, the property appraiser must assess the lands at just value under s. 193.011, F.S. This provision applies retroactively to natural disasters that occurred on or after July 1, 2017. See Chapter 2018-84, Section 1, Laws of Florida (CS/CS/SB 740).

**Note:** Legislation enacted in 2018 created section 193.461(8), F.S., to provide that lands classified as agricultural, which are not being used for agricultural production due to a hurricane that made landfall in this state during 2017, must continue to be classified as agricultural through December 31, 2022, unless the lands are converted to a nonagricultural use. Lands converted to nonagricultural use are not covered by this subsection and must be assessed as otherwise provided by law. This amendment applies to the 2018 tax roll. See Chapter 2018-118, Sections 12 and 13, Laws of Florida (CS/HB 7087).

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### **Agricultural Property: Special Types**

See Sections 193.451 and 193.4615, F.S.

In addition to the classified use assessments of agricultural land discussed previously, there are additional provisions which address specific kinds of agricultural property.

These provisions usually deal with the assessment of tangible personal property and instruct that said property should either have no value placed upon it or that it should be valued as salvage.

Items with no value:

- \* Growing annual crops
- \* Nonbearing fruit trees
- \* Raw agricultural products (until offered for sale)

Items valued as salvage:

- \* Citrus grading and classification equipment leased from the Department of Agriculture
- \* Obsolete agricultural equipment

### **Pollution Control Devices**

This classification is governed by Section 193.621, F.S., which:

- \* States that pollution control devices installed in manufacturing or industrial plants or installations shall be valued as salvage.
- \* Provides that demolition and reconstruction of part of such a facility for the purpose of reducing pollution, and which does not substantially increase the productivity of the facility, shall not increase the facility's assessed value.
- \* Allows the property appraiser to seek a recommendation from the Department of Environmental Protection as to what constitutes pollution control.
- \* Allows the Department of Environmental Protection to promulgate rules concerning this exemption.

### **Noncommercial Recreation and Conservation Lands**

This classification is governed by Section 193.501, F.S.

To receive this classification, property must be subject to a conservation easement, qualified as environmentally endangered land, designated as conservation land, or used for outdoor recreational or park purposes.



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1 In addition, the owner must convey all rights to develop the property to a public entity or  
2 enter into a covenant with a public entity, for a period no less than ten years, providing  
3 that the property shall be subject to one or more of the conservation restrictions  
4 provided in Section 704.06(1), F.S. and shall not be used by the owner except for  
5 outdoor recreational purposes.

6  
7 If the covenant or conveyance extends for more than ten years, the property shall be  
8 valued considering no factors other than those relative to its value for the present use  
9 as restricted by the covenant or conveyance.

10  
11 If the covenant has less than ten years left, the property will be valued at just value  
12 considering the restrictions imposed by the covenant.

13  
14 If the owner seeks to end the covenant before its expiration, he or she will be liable for  
15 all deferred tax liability plus interest.

### 16 17 18 **Historic Property**

19 There are two separate sections of the Florida Statutes which enact two separate  
20 programs for historic properties.

21  
22 \* Section 193.503, F.S., applies to historic properties used for commercial or certain  
23 nonprofit purposes.

24  
25 \* Section 193.505, F.S., deals with other historically significant property.  
26  
27

### 28 **Historic Property: Section 193.503, F.S.**

29 The criteria for qualifying for this classification are as follows:  
30

31 \* Classification under this section must be authorized by the city or county, in which  
32 case it applies to that entity's tax levy;  
33

34 \* An application for classification must be filed by March 1;  
35

36 \* The property must be used for commercial purposes or by a not-for-profit  
37 organization under Section 501(c)(3) or (6) of the Internal Revenue Code;  
38

39 \* The property must be: listed in the National Register of Historic Places, part of a  
40 National Register Historic District, or designated as historic or part of a historic  
41 district under a local preservation ordinance;  
42

43 \* The property must be maintained in good condition to preserve historic value; and  
44

45 \* The property must be open to the public 40 hours per week for 45 weeks per year or  
46 for 1800 hours annually.

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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
- \* When the covenant ends, the owner is responsible for all deferred tax liability plus interest.

### **High-water Recharge Property**

The county or city must adopt an ordinance allowing for this classification. See Section 193.625, F.S.

- \* The ordinance shall provide the formula for assessing property which qualifies for this classification.
- \* Land must be used for “bona fide high-water recharge purposes.”
- \* Application for this classification must be made by March 1.
- \* The land owner must contract to use the land for high-water recharge purposes for five years or more.

To qualify as being used for “bona fide high-water recharge purposes”: See Subsection 193.625(3)(b), F.S.

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- \* The land use must have been continuous.
- \* The land use must be vacant residential, vacant commercial, vacant industrial, vacant institutional, nonagricultural, or single-family residential.
- \* The maintenance of one single-family residential dwelling on part of the land does not in itself preclude a high-water recharge classification.
- \* The land must be located within a prime groundwater recharge area or in an area considered by the appropriate water management district to supply significant groundwater recharge.
- \* Significant groundwater recharge shall be assessed by the appropriate water management district on the basis of hydrologic characteristics of the soils and underlying geologic formations.
- \* The land must not be receiving any other special classification.
- \* There must not be in the vicinity of the land any activity that has the potential to contaminate the ground water, including, but not limited to, the presence of:
  - \* Toxic or hazardous substances;
  - \* Free-flowing saline artesian wells;
  - \* Drainage wells;
  - \* Underground storage tanks; or
  - \* Any potential pollution source existing on a property that drains to the property seeking the high-water recharge classification.
- \* The parcel of land must be at least ten acres.

### **Working Waterfront Property**

The Florida Constitution sets forth criteria for classifying and valuing working waterfront property.

The provisions of Amendment 6, working waterfronts, have been placed in the Florida Constitution at Article VII, Section (4)(j), effective for the 2010 assessment year.

These provisions state as follows:

*“(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:*

*a. Land used predominantly for commercial fishing purposes.*

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1           *b. Land that is accessible to the public and used for vessel launches*  
2           *into waters that are navigable.*

3  
4           *c. Marinas and drystacks that are open to the public.*

5  
6           *d. Water-dependent marine manufacturing facilities, commercial*  
7           *fishing facilities, and marine vessel construction and repair*  
8           *facilities and their support activities.*

9  
10           (2) *The assessment benefit provided by this subsection is subject to*  
11           *conditions and limitations and reasonable definitions as specified by*  
12           *the legislature by general law.”*

13  
14   The constitutional amendment on working waterfronts is self-executing with  
15   authorization for the Legislature to elaborate by general law.

16  
17   In the 2009 and 2010 sessions, the Legislature considered bills that did not pass but  
18   that would have contained guidance for classifying and valuing working waterfront  
19   property. These bills would have applied to the 2010 tax year if they had become law.

20  
21   Amendment 6, creating classification of property used for working waterfronts, is  
22   effective for the 2010 year in the absence of legislation.

### 23 24 25   **Renewable Energy Source Device Classification**

26   \*   Legislation enacted in 2013 created section 193.624, F.S., to provide for  
27       assessment of a "renewable energy source device" installed on or after January 1,  
28       2013, to new and existing residential real property.

29  
30   \*   When determining the assessed value of real property used for residential purposes,  
31       an increase in the just value of the property attributable to the installation of a  
32       renewable energy source device may not be considered.

33  
34   \*   This requirement is an exception to certain provisions relating to assessment of  
35       changes, additions, or improvements in sections 193.155 and 193.1554, F.S.

36  
37   \*   This legislation became effective July 1, 2013 and applies to assessments and  
38       administrative reviews beginning in 2014. See Chapter 2013-77, Sections 1, 2, and  
39       3, Laws of Florida (HB 277).

40  
41   **Note:** Legislation enacted in 2017 amended section 193.624, F.S., to provide, for  
42       nonresidential real property, that 80 percent of the just value attributable to a renewable  
43       energy source device may not be considered in determining the assessed value of the  
44       property; this provision applies to devices installed on nonresidential property on or after  
45       January 1, 2018, except in a fiscally constrained county for which application for  
46       comprehensive plan amendment or planned unit development zoning is made by

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- 1 December 31, 2017. This change became effective July 1, 2017, and applies to
- 2 assessments and administrative reviews beginning in 2018. See Chapter 2017-118,
- 3 Sections 2 and 8, Laws of Florida (CS/SB 90).
- 4

## **Module 10: Administrative Reviews of Assessment Difference Transfers and Tax Deferrals**

**Training Module 10 addresses the following topics:**

### **PART 1**

#### **Administrative Reviews of Assessment Difference Transfers**

- Overview of Assessment Difference Transfers (Portability)
- Petitions on Determinations Made in the New Homestead County
- Petitions on Determinations Made in the Previous Homestead County
- Procedures for a Hearing in the Previous Homestead County
- Procedures for a Cross-county Hearing in the New Homestead County
- Statutory Criteria for Assessment Difference Transfers
- The Administrative Review Process for Assessment Difference Transfers

### **PART 2**

#### **Administrative Reviews of Tax Deferrals and Penalties**

- Overview of Tax Deferrals
- Overview of Penalties on Tax Deferrals
- Unique Aspects of Petitions on Tax Deferrals and Penalties
- The Administrative Review Process for Tax Deferrals and Penalties

### **Learning Objectives**

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

- Recognize and apply the definition of “assessment difference”
- Recognize and apply the definition of “portability” and “assessment difference transfer”
- Identify the two general locations where portability may apply
- Recognize where a portability petition must be filed
- Identify and apply the requirements for petitions on determinations made in the new homestead county
- Identify and apply the requirements for petitions on determinations made in the previous homestead county
- Recognize and apply the procedures for a hearing in the previous homestead county
- Identify and apply the procedures for a cross-county hearing in the new homestead county
- Identify and apply the statutory criteria for assessment difference transfers
- Apply the administrative review process for assessment difference transfers
- Recognize how tax deferrals differ from exemptions
- Identify the property types for which tax deferrals could apply
- Identify when penalties on tax deferrals apply

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- Recognize the unique aspects of petitions on tax deferrals and penalties
- Apply the administrative review process for tax deferrals and penalties

### **PART 1**

#### **Overview of Assessment Difference Transfers (Portability)**

Under a constitutional amendment passed in January 2008, along with 2008 legislation, a taxpayer may qualify to transfer the difference between the just value and assessed value of his or her previous homestead property to a new homestead property.

“Assessment difference” means the difference between just value and assessed value that can be transferred from a previous homestead property to a new homestead property.

“Portability” and “assessment difference transfer” mean the assessment, at less than just value, of a new homestead property based on the transfer of an assessment difference from a previous homestead property after the previous homestead has been abandoned.

Subsection 193.155(8), F.S., sets time limits for qualifying for an assessment difference transfer and sets limitations on the amount of the assessment difference that can be transferred.

To qualify for transfer of an assessment difference, a homestead property owner must timely file a portability application with the property appraiser on a separate form.

- \* This portability application should be filed along with the homestead exemption application for the new residence.

Portability may apply to a new homestead property located in the same county as the previous homestead property or may apply to a new homestead property located in a county other than the previous homestead county.

When a property owner applies for portability in a county other than the previous homestead county, the property appraiser in the previous homestead county is required to provide the amount of the assessment difference for the previous homestead to the property appraiser in the new homestead county.

- \* Therefore, in cases where two counties are involved, the property appraiser in each county must take actions that determine whether portability is granted and determine the amount of the transfer.

Some of the criteria for qualifying for portability and calculating allowable amounts for 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,  
12 Laws 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.

### **Petitions on Determinations Made in the New Homestead County**

34  
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/dor/property/forms/index.html#11>

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/dor/property/forms/index.html#11>  
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. The maximum amount that can be transferred is \$500,000.
2. If the new homestead is lower in value than the old homestead, there is a percentage limitation on the amount that can be transferred as described in section 193.155(8)(b), F.S., and Rule 12D-8.0065, F.A.C.

### **The Administrative Review Process for Assessment Difference Transfers**

The Board or special magistrate is not authorized to adjust the just, assessed, or taxable value of the previous homestead property. See Rule 12D-9.028(1), F.A.C.

Under Rule 12D-9.027(4), F.A.C., in administrative reviews of assessment difference transfers, the Board or special magistrate shall follow this sequence of general procedural steps:

1. Consider the admitted evidence presented by the parties.
2. Identify the particular assessment difference transfer issue that is the subject of the petition.
3. Identify the statutory criteria that apply to the portability assessment difference transfer that was identified as the issue under administrative review.
4. Identify and consider the essential characteristics of the petitioned property or the property owner, as applicable, based on the statutory criteria that apply to the issue under administrative review.
5. Identify and consider the basis used by the property appraiser in issuing the denial or determining the amount of the assessment difference transfer for the petitioned property.
6. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's denial or partial denial is incorrect and the portability assessment difference transfer should be granted because all of the applicable statutory criteria are satisfied.

The Board or special magistrate must decide whether the admitted evidence, regardless of which party presented the evidence, has sufficient weight (in relevance and credibility) to legally justify overturning the property appraiser's original determination and granting the portability assessment difference transfer.

If the admitted evidence proves the petitioner's case by the greater weight of the evidence, the original determination must be overturned and the petition granted.

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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.

## **Module 11: Requirements for Written Decisions**

### **Training Module 11 addresses the following topics:**

- Written Decisions and Taxpayer Rights
- General Requirements for Written Decisions
- Required Forms for Written Decisions
- Statements on Board Decisions by the Auditor General
- Statements on Board Decisions by Florida Courts
- Sufficiency of Evidence
- Evaluation of the Relevance of Evidence
- Evaluation of the Credibility of Evidence
- Requirements for Findings of Fact
- Requirements for Conclusions of Law
- Specific Requirements for Findings of Fact and Conclusions of Law
- Reasons for Recommended Decisions and Final Decisions

### **Learning Objectives**

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

- Apply taxpayer rights to written decisions
- Identify the conditions under which a written decision is required
- Recognize and properly complete the required forms for written decisions
- Recognize statements from the Auditor General and Florida courts on findings of fact and conclusions of law
- Evaluate the relevance of evidence
- Evaluate the credibility of evidence
- Identify and apply the requirements for findings of fact
- Identify and apply the requirements for conclusions of law
- Identify and apply the specific requirements for findings of fact and conclusions of law
- Recognize the requirements for reasons for upholding or overturning the assessment

### **Written Decisions and Taxpayer Rights**

Florida Statutes provide the following taxpayer right: *“The right to be sent a timely written decision by the value adjustment board containing findings of fact and conclusions of law and reasons for upholding or overturning the determination of the property appraiser.”* See Subsections 192.0105(2)(g) and 194.034(2), F.S.

The special magistrate and Board clerk shall observe the petitioner’s right to be sent a 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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Each recommended decision and each final decision shall contain sufficient factual and legal information and reasoning to enable the parties to understand the basis for the decision, and shall otherwise meet the requirements of law. See Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

The Board shall issue all final decisions within 20 calendar days of the last day the Board is in session pursuant to Section 194.032, F.S. See Rule 12D-9.032(4), F.A.C.

### **Required Forms for Written Decisions**

For producing recommended decisions and final decisions, the Department prescribes the Form DR-485 series, and any electronic equivalent forms approved by the Department under Section 195.022, F.S. See Rule 12D-9.030(4), F.A.C.

- \* The Form DR-485 series is available on the Department's website at the following link: <http://floridarevenue.com/property/Pages/Forms.aspx>
- \* Boards and special magistrates are required to use forms that are current and up-to-date.
- \* The Form DR-485 series, or approved electronic equivalent forms, are the only forms that shall be used for producing remand decisions, recommended decisions, and final decisions. See Rules 12D-9.029(4), 12D-9.030(4), and 12D-9.032(5), F.A.C.
- \* The Form DR-485 series has separate sections for findings of fact and conclusions of law. Additional sheets may be attached to the form if more space is needed to properly complete the required sections listed on the form.

For producing written remand decisions, the Board or special magistrate must correctly complete Form DR-485R, which also has a separate section for appropriate directions to the property appraiser.

For producing recommended decisions on value petitions, an appraiser special magistrate must correctly complete Form DR-485V.

For producing recommended decisions on exemption, classification, or portability petitions, an attorney special magistrate must correctly complete Form DR-485XC.

For producing final decisions, the Board must use Form DR-485V for value petitions and must use Form DR-485XC for exemption, classification, or portability petitions.

### **Statements on Board Decisions by the Auditor General**

The Florida Auditor General reports to and works for the Florida Legislature. Generally, the Auditor General is authorized to conduct performance audits of state and local governments.

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Auditor General's [Report No. 2006-007](#), issued in July 2005, contained the results of the Auditor General's performance audit of value adjustment boards.

This report contains criticisms of past written decisions of value adjustment boards.

This Auditor General's report contained the following two statements:

\* *"Our review of the written decisions of the special masters and the Boards revealed that 37 percent of the written decisions (52 of 139) from Boards in 11 counties...did not contain sufficient details in the finding of facts section of the written decisions to satisfy the applicable requirements of the above-cited statute and rule."*

\* *"We recommend that the Boards review the content of written findings and conclusions, whether heard by the Boards or special masters, and ensure that those findings and conclusions are documented in accordance with Section 194.034(2), Florida Statutes, and Department of Revenue Rule 12D-10.003(5)(a), Florida Administrative Code."*

**Note:** Rule 12D-10.003(5)(a), cited by the Auditor General in 2005 as shown above, was later re-numbered to Rule 12D-10.003(3) as part of a rule amendment effective March 30, 2010. Users of these training materials are directed to current Rule 12D-10.003(3), F.A.C.

### **Statements on Board Decisions by Florida Courts**

Florida court decisions have also commented on the inadequacy of some past written records.

The following four statements appear, along with other statements, in a Florida appellate court decision that was critical of a Board's written decision. See Palm Beach Gardens Community Hospital, Inc. v. Nikolits, 754 So.2d 729 (Fla. 4th DCA 1999).

\* *"The requirement that the value adjustment board shall contain in its decision findings of fact and conclusions of law and shall contain reasons for upholding or overturning the determination of property appraiser is not discretionary but mandatory."* Also, see Subsection 194.034(2), F.S.

\* *"A review of the Record of Decision and Notice of the Value Adjustment Board reveals the total absence of findings of facts and the total absence of reasons for upholding the property appraiser."*

\* *"Under the heading 'conclusions of law,' the value adjustment board merely states: 'Petitioner did not overcome burden of proof.'"*

\* *"Simply saying, as the board did in this case, that the taxpayer failed to carry his burden of proof is little more than saying, 'sorry, but you lose.'"*

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Another Florida appellate court determined that a Board's written decisions were inadequate and did not meet the requirements of law. See Higgs v. Property Appraisal Adjustment Board of Monroe County, 411 So.2d 307 (Fla. 3d DCA 1982).

This court stated the following regarding the Board's decisions.

\* *"Eight of the decisions contain no reasons, findings or conclusions at all; twelve give as a reason 'condition of building' or 'condition of house'; three expand upon this by stating 'condition of building (or house) not computed properly'; two say 'land use restricted'; and the remainder variously state 'income factors,' 'set back restrictions,' 'restricted use of land-Old Island District,' 'lot location and restricted use,' and 'due to condition.'"*

\* This court then referred to the *"woeful inadequacy of these statements."*

\* This court also stated the following regarding the decisions of this Board.

\* *"The Board does not seriously contend, and indeed cannot, that the written decisions comport with the law's requirements."*

Thus, Florida courts have expressed the importance of timely, written Board decisions that include appropriate findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser.

### **Sufficiency of Evidence**

When applied to evidence, the term "sufficient" is a test of adequacy. See Rule 12D-9.027(6), F.A.C.

Sufficient evidence is admitted evidence that has enough overall weight, in terms of relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6), F.A.C.

A particular conclusion is justified when the overall weight of the admitted evidence meets the standard of proof that applies to the issue under consideration. See Rule 12D-9.027(6), F.A.C.

The Board or special magistrate must consider the admitted evidence and determine whether it is sufficiently relevant and credible to reach the "preponderance of the evidence" standard of proof. See Rules 12D-9.025(1)(d), 12D-9.027(5), and 12D-9.027(6), F.A.C.

### **Evaluation of the Relevance of Evidence**

For administrative reviews, "relevant evidence" is evidence that is reasonably related, directly or indirectly, to the statutory criteria that apply to the issue under review. See Rule 12D-9.025(2)(b), F.A.C.

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

In evaluating the relevance of evidence, the Board or special magistrate must consider, as of the January 1 assessment date, how well the evidence relates to the petitioned property or property owner, as applicable, and to the statutory criteria that apply.

Presented below is some information on relevant evidence from recognized sources.

*“Relevant evidence is evidence tending to prove or disprove a material fact.”* See Section 90.401, F.S.

*“In order for evidence to be relevant, it must have a logical tendency to prove or disprove a fact which is of consequence to the outcome of the action. The definition of relevant evidence in section 90.401 combines the traditional principles of ‘relevancy’ and ‘materiality.’ The concept of ‘relevancy’ has historically referred to whether the evidence has any logical tendency to prove or disprove a fact.”* See Ehrhardt’s *Florida Evidence*, 2008 Edition, pages 126-127.

*“Included within the section 90.401 definition of relevancy is the concept of materiality; the evidence must ‘tend to prove or disprove a material fact.’ When evidence is offered to prove a fact which is not a matter in issue, it is said to be immaterial.”* See Ehrhardt’s *Florida Evidence*, 2008 Edition, page 129.

*“In order to determine whether evidence has probative value, the fact for which it is offered to prove must be identified. Evidence may be probative of one fact and not of another.”* See Ehrhardt’s *Florida Evidence*, 2008 Edition, pages 128-129.

*“Whether the evidence has probative value is an issue for the discretion of the court.”* See Ehrhardt’s *Florida Evidence*, 2008 Edition, page 129.

### **Evaluation of the Credibility of Evidence**

For administrative reviews, “credible evidence” is evidence that is worthy of belief (believable). See *Black’s Law Dictionary*, Eighth Edition, page 596.

The definition above means the evidence meets or exceeds a minimum level of credibility, but does not necessarily mean that the credible evidence has sufficient weight to legally justify a particular decision.

Generally, the two types of evidence presented in a Board hearing are testimonial evidence and documentary evidence.

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\* Testimonial evidence (testimony) means statements lawfully made by persons at the hearing.

\* Documentary evidence means documentation lawfully presented by persons at the hearing.

To evaluate the credibility of evidence, the Board or special magistrate may consider factors such as the demeanor of the witnesses and the content, meaning, plausibility, consistency, reasonableness, and validity of the evidence.

The following excerpt on determining the credibility of expert witnesses appears in the [Florida Standard Civil Jury Instructions](#), approved for publication by the Florida Supreme Court.

\* *“You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.”*

It is important that Boards and special magistrates consider the credibility of a unit of evidence in light of all of the evidence.

A text on Florida evidence states the following on weighing testimonial evidence in a civil case.

\* *“What counts is not the volume of the evidence but the quality—not how many witnesses testify but the persuasiveness of the testimony.”* See *Ehrhardt’s Florida Evidence, 2008 Edition*, pages 98-99.

How can the Board or special magistrate evaluate the credibility of documentary evidence (documents, photographs, etc.)?

Determining whether documentary evidence is authentic (genuine) is part of evaluating the credibility of the evidence. Genuine means the evidence is what it is claimed to be.

Documentary evidence may be authenticated by evaluating its appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with the circumstances. See ITT Real Estate Equities, Inc. v. Chandler Insurance Agency, Inc., 617 So.2d 750 (Fla. 4<sup>th</sup> DCA 1993).

Other considerations for evaluating documentary evidence may include: the relative roles of the item’s creator and intended user; the effective date and intended use of the item; and whether the item is signed.

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### **Requirements for Findings of Fact**

Florida law requires that remand decisions, recommended decisions, and final decisions include findings of fact.

*“Every decision of the board must contain specific and detailed findings of fact...”* See Rule 12D-10.003(3), F.A.C.

Findings of fact must be produced and kept in writing.

As used in this training, the term “findings of fact” includes proposed findings of fact produced by special magistrates in their recommended decisions.

Findings of fact are written statements on factual conclusions based only upon the evidence.

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.

The Board legal counsel is responsible for providing the advice and assistance necessary to assure that findings of fact are produced in accordance with law.

Findings of fact must be sufficiently detailed for third parties to understand the findings, and to understand the evidence and reasoning on which the findings of fact must be based.

Each finding of fact must be properly annotated to its supporting evidence. See Rule 12D-10.003(3), F.A.C., referring to “basic and underlying finding.”

Findings of fact are those findings on which the conclusions of law rest and which are supported by evidence. Findings of fact are more detailed than the conclusions of law but less detailed than a summary of the evidence. See Rule 12D-10.003(3)(b), F.A.C., referring to “basic and underlying findings” and “ultimate findings.”

In arriving at the findings of fact, the Board or special magistrate must determine and consider the relevance and credibility of the evidence.

### **Tips for Producing Written Findings of Fact**

The written findings of fact should:

1. Be based upon the relevance and credibility of the evidence;
2. Be reasonably related to statutory attributes of the subject property or, when applicable, to statutory attributes of the subject property owner;
3. Be expressed in terms of the statutory criteria that apply to the issue under administrative review;

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4. Specifically identify the record evidence, or lack of record evidence, that relates to each of the statutory criteria that apply to the issue under administrative review, and specifically state how and why such evidence, or lack of evidence, relates to each of these criteria;
5. Be stated clearly, and answer the questions of “who, what, when, where, how, and why” regarding the evidence;
6. Provide clear support for the conclusions of law that are required in each of the steps set forth in Rule 12D-9.027, F.A.C., which apply to the issue under administrative review;
7. Provide reasons for upholding or overturning the property appraiser’s determination; and
8. Otherwise meet all requirements of law.

### **Requirements for Conclusions of Law**

Florida law requires that remand decisions, recommended decisions, and final decisions include conclusions of law.

Conclusions of law must be produced and kept in writing.

As used in this training, the term “conclusions of law” includes proposed conclusions of law produced by special magistrates in their recommended decisions.

A conclusion of law is a written statement specifying which part(s) of law apply to a finding of fact and stating how the law applies to the finding of fact.

Conclusions of law must be based on findings of fact. See Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

The Board attorney is responsible for providing the advice and assistance necessary to assure that conclusions of law are developed in accordance with law.

Conclusions of law must be sufficiently detailed for third parties to understand the conclusions of law, and to understand the evidence and facts on which the conclusions must be based.

A conclusion of law is usually expressed in the language of a statutory standard and must be supported by and flow rationally from the findings of fact. See Rule 12D-10.003(3)(a), F.A.C., referring to “ultimate finding” and “basic and underlying findings.”

### **Tips for Producing Written Conclusions of Law**

The written conclusions of law should:



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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.

Rule 12D-9.029(9)(b), F.A.C., provides that 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

## 2018 Value Adjustment Board Training - Module 11

1 a continuation hearing, the Board or special magistrate shall issue a decision or  
2 recommended decision that shall contain:

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- 4 1. A finding of fact that the petitioner did not request a continuation hearing or waived  
5 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.
  - 9

10 Legal advice from the Board attorney relating to the facts of a petition or to the specific  
11 outcome of a decision, if in writing, shall be included in the record and referenced within  
12 the findings of fact and conclusions of law. See Rule 12D-9.030(6), F.A.C.

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- 14 \* If not in writing, legal advice from the Board attorney shall be documented within the  
15 findings of fact and conclusions of law. See Rule 12D-9.030(6), F.A.C.
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- 17

### **Reasons for Recommended Decisions and Final Decisions**

18 All recommended decisions and all final decisions must contain written reasons for  
19 upholding or overturning the property appraiser's determination. See Rules 12D-9.030(1)  
20 and 12D-9.032(1)(a), F.A.C.

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23 Reasons are those clearly stated grounds upon which the Board acted. See Rule 12D-  
24 10.003(3)(c), F.A.C.

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26 Reasons for upholding or overturning a particular determination of the property  
27 appraiser must be based only upon the evidence, the findings of fact, and the  
28 conclusions of law for that petition.

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30 Reasons should be sufficiently detailed for the parties to understand the reasons, and to  
31 understand the evidence, facts, and law on which the reasons must be based.

32

33 Reasons should be expressed in findings of fact and conclusions of law.