

# 2022+ 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) 2022 Changes to Statutory Law**
- 2021 Changes to Statutory Law
- 2020 Changes to Statutory Law
- 2019 Changes to Statutory Law
- 2018 Changes to Statutory Law
- ~~2017 Changes to Statutory Law~~
- Statutory Law Effective Beginning With 2009 Assessments
- Administrative Rules and Forms
- Uniform Policies and Procedures Manual and Accompanying Documents
- The Value Adjustment Board and Government-in-the-Sunshine
- Complete Text of Specific Legal Provisions for Taxpayer Rights
- Taxpayer Rights in Section 192.0105, F.S.
- Taxpayer Rights in Rule 12D-9.001, F.A.C.
- Links to Resources on the Internet

### Learning Objectives

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12  
13  
14 In some cases, the Department of Revenue will supplement its training for value  
15 adjustment boards and special magistrates by providing informational bulletins  
16 regarding administrative reviews of assessments.

17  
18 The training and bulletins are not rules and do not have the force or effect of law as do  
19 provisions of the constitution, statutes, and duly adopted administrative rules.

20  
21 \* The training materials and bulletins are aid and assistance as described in section  
22 195.002(1), F.S.

23  
24 \* Board attorneys should not consider the training materials or bulletins as controlling  
25 when providing legal advice, but may consider them as persuasive.

26  
27 \* Boards and special magistrates should not consider the training materials or  
28 bulletins as controlling for findings of fact, conclusions of law, or reasons for  
29 upholding or overturning determinations of the property appraiser or tax collector,  
30 but may consider the training materials and bulletins as persuasive.

31  
32 \* The training materials and bulletins are separate and distinct from the Uniform  
33 Policies and Procedures Manual required by section 194.011(5)(b), F.S., the  
34 contents of which manual do have the force and effect of law.

35  
36 \* To avoid confusion between the training materials required by section 194.035(3),  
37 F.S., and the Uniform Policies and Procedures Manual required by section  
38 194.011(5)(b), F.S., these training materials should not be referred to as a "manual."

39  
40 The training contains information about the law of which Boards, Board attorneys, and  
41 special magistrates should be aware.

42  
43 \* The training also contains the Department's observations, explanations, examples,  
44 and recommendations intended to assist Boards, Board attorneys, and special  
45 magistrates in performing their duties consistent with law.

46

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

2

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

7

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

10

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

14

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

18

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

22

23 (a) Legal advice from the Board attorney;

24

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

27

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

30

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

33

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

37

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

42

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

46

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

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

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

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

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

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

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

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

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

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

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

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

# 2022+ 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14  
15  
16 Described below are the persons who are required to take this training each year before  
17 any hearings are conducted, but who are not required to complete the training  
18 examination.

- 19  
20  
21 1. In those counties with a population of 75,000 or less where the Board does not use  
22 special magistrates, either all Board members or the Board attorney must take all  
23 training modules before conducting any hearings, including any updated training  
24 modules.
- 25  
26 2. Each special magistrate with five years of experience, and who is otherwise  
27 qualified, must take the required training modules before conducting any hearings  
28 and must complete any applicable updated training modules.

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

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

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

35  
36  
37 Before being appointed, each special magistrate with at least three years but less than  
38 five years of relevant experience and who is otherwise qualified and wants to substitute  
39 the training for two years of the required experience must complete the required training  
40 modules and the required examination and also must complete any applicable updated  
41 training modules and examinations.

42  
43  
44 Before being appointed, the special magistrates required to complete the exam must  
45 receive from the Department a certificate of completion.

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

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

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

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

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

15  
16 \* Each of these opportunities is summarized below.

#### 17 18 1. Feedback to Taxing Authorities

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

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

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

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

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

#### 37 38 2. Informal Conference with the Property Appraiser

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

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

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

### 4 3. Petition to the Value Adjustment Board

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

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

### 12 4. Lawsuit in Circuit Court

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

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

## 19 **Taxpayer Rights**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46

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### **(NEW) 2022 Changes to Statutory Law**

In 2022, changes to statutory law were enacted. These changes will affect administrative reviews of assessments beginning in 2023, and in some cases 2022. These new laws are summarized below and are addressed where necessary in various modules of this training. Please refer to the chapter law and statutes to read the legislative changes in context with the surrounding statutory language. The chapter laws are available at: <http://laws.flrules.org/>

#### Legislation enacted in 2022:

- Created section 193.4613, F.S., to provide that beginning January 1, 2023, land used in the production of aquaculture and aquaculture products shall be assessed based solely on its agricultural use, consistent with section 193.461(6)(a) and (c), F.S. See Chapter 2022-97, Sections 2, and 3, Laws of Florida, (CS/HB 7071), effective January 1, 2023.
- Created section 197.3195, F.S., to provide retroactive property tax relief to parcel owners affected by a sudden and unforeseen collapse of a multistory residential building with at least 50 dwelling units, applicable retroactively to January 1, 2021. The bill requires value adjustment boards to dismiss petitions filed by parcel owners challenging the value of the parcel for the year of the collapse. The bill amended s. 194.032(1)(b), F.S., to permit the value adjustment board to meet and hear denials of tax abatements from destruction caused by a sudden and unforeseen collapse based on the statutory criteria in s. 197.3195, F.S. The law specifies that s. 197.319, F.S., relating to refunds due from catastrophic events, does not apply to any parcel for which an abatement of taxes is provided under s. 197.3195, F.S., due to a sudden and unforeseen collapse. The property appraiser must use the just value and assessed value of the destroyed parcel on January 1 of the year preceding the year of the destruction in calculating portability under section 193.155(8), F.S. Section 197.3195, F.S. is repealed December 31, 2023, unless reenacted by the Legislature. See Chapter 2022-97, Sections 16 and 17, Laws of Florida, (CS/HB 7071), effective May 6, 2022 and retroactive to January 1, 2021.
- Created section 197.319, F.S., to provide a prorated refund of property taxes for residential property rendered uninhabitable for 30 days or more due to a catastrophic event in 2023 or thereafter. A “catastrophic event” is defined as a calamity or misfortune not caused, either directly or indirectly, by the property owner with the intent to destroy the property. The bill includes the term “residential improvements” which are defined as, “real estate used and owned as a homestead as defined in section 196.012(13), F.S., or nonhomestead residential property as defined in section 193.1554(1), F.S. If a residential improvement is rendered uninhabitable for at least 30 days, the property owner may apply for a refund of a portion of their property taxes for the time the property was uninhabitable. The property owner must file an application for refund with the property appraiser by March 1 of the year immediately following the catastrophic event. Upon receipt of

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1 such application, the property appraiser must investigate to determine whether the  
2 applicant is entitled to the refund. If the property owner fails to file the application by  
3 the March 1 deadline due to particular extenuating circumstances, they may file an  
4 application for refund and may file a petition to the value adjustment board  
5 requesting that the refund be granted. See Chapter 2022-97, Sections 14 and 15, Laws of  
6 Florida, (CS/HB 7071), effective January 1, 2023.

- 7
- 8 • Amended section 196.202(1), F.S., to increase the exemptions for bona fide Florida  
9 residents who are widows, widowers, blind, or totally and permanently disabled from  
10 \$500 to \$5,000, for each exemption. The increase first applies to the 2023 tax roll.  
11 See Chapter 2022-97, Sections 12 and 13, Laws of Florida, (CS/HB 7071), effective January  
12 1, 2023.
- 13
- 14 • Amended section 196.1978(2)(a), F.S., to specify the method of calculating the 15-  
15 year waiting period for an affordable housing exemption for a multifamily project. The  
16 15 years is calculated based on the earliest of three (3) dates:
  - 17 1. The effective date of the recorded agreement with the Florida Housing Finance  
18 Corporation,
  - 19 2. The first day of the first taxable year in which the property was placed in service  
20 as an affordable housing property, or
  - 21 3. The date the property received a certificate of occupancy or certificate of  
22 substantial completion, allowing the property to be used as affordable housing.
- 23 This amendment first applies to the 2023 tax roll. See Chapter 2022-97, Sections 10, 11 and  
24 55, Laws of Florida, (CS/HB 7071), effective July 1, 2022.
- 25
- 26 • Amended section 196.031, F.S., to create a new subsection (5) which provides for  
27 purposes of applying exemptions listed in that section, exempt real property includes  
28 portions of the real property and contiguous real property assessed solely on the  
29 basis of character or use pursuant to sections 193.461 or 193.501, F.S., or assessed  
30 pursuant to section 193.505, F.S. The amendments do not affect the provisions in  
31 section 193.155, F. S., limiting the application of that section to the residence and  
32 curtilage. The amendments to section 196.031, F.S. are intended to be remedial and  
33 clarifying in nature and apply retroactively, but do not create a right to a refund of  
34 any tax paid before the effective date of July 1, 2022. See Chapter 2022-97, Sections 5  
35 and 6, Laws of Florida, (CS/HB 7071), effective July 1, 2022.
- 36
- 37 • Amended section 194.032(1)(b), F.S., to allow a value adjustment board to hear  
38 appeals pertaining to a property appraiser's denial of tax abatements under section  
39 197.3195, F.S., relating to destruction caused by a sudden and unforeseen collapse,  
40 and, starting in 2023, tax refunds under section 197.319, F.S., relating to residential  
41 improvements rendered uninhabitable by a catastrophic event. Although section  
42 194.032(1)(b), F.S., permits the value adjustment board to meet and hear denials of  
43 tax abatements from destruction caused by a sudden and unforeseen collapse  
44 based on the statutory criteria in section 197.3195, F.S., this statute requires the  
45 value adjustment board to enter a final decision that dismisses any petition filed  
46 concerning the value of the parcel for the year of destruction. Also, since section

## 2022+ Value Adjustment Board Training - Module 1

1 197.319, F.S., is not effective until January 1, 2023, the amendment permitting the  
2 value adjustment board to meet and hear petitions filed under that statute will not  
3 apply until the 2023 value adjustment board. The law specifies that section 197.319,  
4 F.S., relating to refunds due from catastrophic events, does not apply to any parcel  
5 for which an abatement of taxes is provided under section 197.3195, F.S. due to a  
6 sudden and unforeseen collapse. See Chapter 2022-97, Section 4, Laws of Florida,  
7 (CS/HB 7071), effective May 6, 2022.

- 8  
9 • Amended section 196.173(2), F.S., which provides an exemption for deployed  
10 servicemembers. The law change extended the application deadline to June 1,  
11 2022 or, if the taxpayer shows extenuating circumstances for failure to timely file,  
12 until the 25th day after the property appraiser mails the TRIM notice The  
13 amendment removed Operation Observant Compass, which began in October  
14 2011. The amendment added Operation Enduring Freedom - Horn of Africa,  
15 which began in January 2015, and added European Reassurance Initiative/  
16 European Deterrence Initiative, which began in 2014. These amendments apply  
17 to the 2022 ad valorem tax roll. See Chapter 2022-97, Sections 7, 8, and 9, Laws of  
18 Florida, (CS/HB 7071), effective May 6, 2022.
- 19  
20 • Amended section 570.85, F.S., relating to agritourism, to remove a requirement  
21 that agritourism be a “secondary” stream of revenue for a bona fide agricultural  
22 operation. The requirement of primary use for agriculture in section  
23 193.461(3)(b), F.S., is retained after amending the agritourism statute. Amended  
24 section 570.87, F.S. to provide an agricultural classification pursuant to section  
25 193.461, F.S. may not be denied or revoked solely due to the conduct of  
26 agritourism activity on a bona fide farm or the construction, alteration, or  
27 maintenance of a nonresidential farm building, structure, or facility on a bona fide  
28 farm which is used to conduct agritourism activities. So long as the building,  
29 structure, or facility is an integral part of the agricultural operation, the land it  
30 occupies shall be considered agricultural in nature. However, such buildings,  
31 structures, and facilities, and other improvements on the land, must be assessed  
32 under section 193.011, F.S. at their just value and added to the agriculturally  
33 assessed value of the land. See Chapter 2022-77, Laws of Florida, (SB 1186),  
34 effective July 1, 2022.

### **(NEW) 2021 Changes to Statutory Law**

35  
36  
37 In 2021, changes to statutory law were enacted. These changes will affect  
38 administrative reviews of assessments beginning in 2021, and in some cases 2022.  
39 These new laws are summarized below and are addressed where necessary in various  
40 modules of this training. Please refer to the chapter law and statutes to read the  
41 legislative changes in context with the surrounding statutory language. The chapter laws  
42 are available at: <http://laws.flrules.org/>  
43  
44

45 Legislation enacted in 2021:  
46

## 2022+ Value Adjustment Board Training - Module 1

- 1 • Amended section 196.075(4)(d), and (5) F.S., which provides an additional  
2 homestead exemption for persons 65 and older. The amendment to section  
3 196.075(4)(d), F.S., requires an ordinance enacted by a local government  
4 authorizing an additional homestead exemption for low-income seniors must  
5 require the taxpayer to submit a sworn statement of household income when  
6 claiming the exemption for the first time. The amendment to section 196.075(5),  
7 F.S., provides that the property appraiser notifies each taxpayer of the adjusted  
8 income limitation each year. The taxpayer must respond by May 1 if their income  
9 exceeds the limitation. The property appraiser may conduct random audits of the  
10 taxpayers' sworn statements. See Chapter 2021-208, Section 1, Laws of Florida, (HB  
11 597), effective July 1, 2021.  
12
- 13 • Amended section 194.011(3), F.S., to clarify that a condominium association, as  
14 defined in s. 718.103, a cooperative association as defined in s. 719.103, or any  
15 homeowners' association as defined in s. 723.075, with approval of its board of  
16 administration or directors, may file with the value adjustment board a single joint  
17 petition on behalf of any association members who own units or parcels of property  
18 which the property appraiser determines are substantially similar with respect to  
19 location, proximity to amenities, number of rooms, living area, and condition.  
20 Requires an association to notify its members of its intention to petition the value  
21 adjustment board and include in the notice a statement that, by not opting out of the  
22 petition, the unit or parcel owner agrees that the association shall also represent the  
23 unit or parcel owner in any related proceedings. Amendments created provisions for  
24 the association to continue to represent owners in subsequent circuit court  
25 proceedings. See Chapter 2021-209, Section 1, Laws of Florida, (HB 649), effective July 1,  
26 2021.  
27
- 28 • Repealed section 193.019, F.S., relating to the exemption for hospitals and  
29 community benefit reporting. See Chapter 2021-31, Section 1, Laws of Florida, (HB  
30 7061), effective May 21, 2021.  
31
- 32 • Amended section 193.155(3)(a), F.S., to exclude additional transfers from being  
33 considered changes in ownership. Created section 193.155(3)(a)1.d., F.S., to  
34 exclude a change or transfer via an instrument in which the owner entitled to the  
35 homestead exemption is listed as both grantor and grantee of the real property  
36 and one or more other individuals, all of whom held title as joint tenants with  
37 rights or survivorship with the owner are named only as grantors and removed  
38 from the title. Created section 193.155(3)(a)5., F.S., to exclude a transfer of  
39 property involving multiple owners holding title as joint tenants with rights of  
40 survivorship in which one or more owners were entitled to and received  
41 homestead exemption on the property; one or more owners dies; and  
42 subsequent to the transfer, the surviving owner(s) previously entitled to and  
43 receiving homestead exemption continue to be entitled to and receive the  
44 homestead exemption. See Chapter 2021-31, Section 2, Laws of Florida, (HB 7061),  
45 effective July 1, 2021.  
46

## 2022+ Value Adjustment Board Training - Module 1

- 1 • Amended section 193.155(4)(b), F.S., to provide that changes, additions, or  
2 improvements that replace all or a portion of homestead property, including  
3 ancillary improvements, damaged or destroyed by misfortune or calamity shall be  
4 assessed upon substantial completion subject to the assessment increase  
5 limitation using the homestead property's assessed value as of the January 1  
6 immediately before the date on which the damage or destruction was sustained,  
7 when: (a. the square footage of the homestead property as changed or improved  
8 does not exceed 110 percent of the square footage of the homestead property  
9 before the damage or destruction; or (b. the total square footage of the  
10 homestead property as changed or improved does not exceed 1,500 square feet.  
11 See Chapter 2021-31, Sections 2 and 7, Laws of Florida, (HB 7061), effective July 1,  
12 2021 and applicable retroactively to assessments made on or after January 1, 2021.  
13
- 14 • Amended section 193.1554(6)(b), F.S. to provide that changes, additions, or  
15 improvements that replace all or a portion of nonhomestead residential property,  
16 including ancillary improvements, damaged or destroyed by misfortune or  
17 calamity shall be assessed upon substantial completion subject to the  
18 assessment increase limitation using the nonhomestead property's assessed  
19 value as of the January 1 prior to the date on which the damage or destruction  
20 was sustained, when (a. the square footage of the property as changed or  
21 improved does not exceed 110 percent of the square footage of the property  
22 before the damage or destruction, or (b. the total square footage of the property  
23 as changed or improved does not exceed 1,500 square feet. See Chapter 2021-31,  
24 Sections 4 and 7, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable  
25 retroactively to assessments made on or after January 1, 2021.  
26
- 27 • Amended section 193.1555(6)(b), F.S. to provide that changes, additions, or  
28 improvements that replace all or a portion of real property, including ancillary  
29 improvements, damaged or destroyed by misfortune or calamity shall be  
30 assessed upon substantial completion subject to the assessment increase  
31 limitation using the nonresidential real property's assessed value as of the  
32 January 1 prior to the date on which the damage or destruction was sustained,  
33 when (a. the square footage of the property as changed or improved does not  
34 exceed 110 percent of the square footage of the property before the damage or  
35 destruction, or (b. the total square footage of the property as changed or  
36 improved does not exceed 1,500 square feet. See Chapter 2021-31, Sections 6 and  
37 7, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable retroactively to  
38 assessments made on or after January 1, 2021.  
39
- 40 • Amended section 196.196(2), F.S., to provide that portions of a property that are  
41 not predominantly used for charitable, religious, scientific, or literary purposes are  
42 not exempt from taxation, and that an exemption for the portions of property used  
43 for charitable, religious, scientific, or literary purposes is not affected so long as  
44 the predominant use of such property is for charitable, religious, scientific, or  
45 literary purposes. The amendment applies to taxable years beginning on or after  
46 January 1, 2022, and does not provide a basis for an assessment of any tax not

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1 paid or create a right to a refund or credit of any tax paid before July 1, 2021. See  
2 Chapter 2021-31, Sections 8 and 9, Laws of Florida, (HB 7061), effective July 1, 2021  
3 and applicable beginning January 1, 2022.

- 4  
5 • Amended section 196.1978(2), F.S., affordable housing property exemption,  
6 removing the ad valorem tax discount of 50 percent and enacting an exemption  
7 of 100 percent on multifamily projects that provide housing to extremely-low-  
8 income, very-low-income, or low-income families. Such a multifamily project will  
9 receive the exemption beginning on January 1 of the year following the 15th year  
10 of such an agreement. See Chapter 2021-31, Section 10, Laws of Florida, (HB 7061),  
11 effective July 1, 2021.
- 12  
13 • Amended section 196.198, F.S., educational property exemption, to provide that  
14 land, buildings, and other improvements used exclusively for educational  
15 purposes shall be deemed owned by an educational institution if the educational  
16 institution that currently uses the land, buildings, and other improvements for  
17 educational purposes is an educational institution described under s. 212.0602,  
18 F.S, and, under a lease, the educational institution is responsible for any taxes  
19 owed and for ongoing maintenance and operational expenses for the land,  
20 buildings, and other improvements. The owner of the property must disclose to  
21 the educational institution the full amount of the benefit derived from the  
22 exemption and the method for ensuring the educational institution receives the  
23 benefit so that the educational institution receives the full benefit of the  
24 exemption. Also, property owned by a house of public worship and used by an  
25 educational institution for educational purposes limited to students in preschool  
26 through grade 8 is exempt. The amendment relating to property owned by a  
27 house of public worship is remedial and clarifying in nature and applies to actions  
28 pending as of July 1, 2021. See Chapter 2021-31, Sections 11 and 12, Laws of Florida,  
29 (HB 7061), effective July 1, 2021.

### 30 31 32 **2020 Changes to Statutory Law**

33 In 2020, changes to statutory law were enacted. These changes will affect  
34 administrative reviews of assessments beginning in 2020, and in some cases 2019.  
35 These new laws are summarized below and are addressed where necessary in various  
36 modules of this training. Please refer to the chapter law and statutes to read the  
37 legislative changes in context with the surrounding statutory language. The chapter laws  
38 are available at: <http://laws.flrules.org/>

39  
40 Legislation enacted in 2020:

- 41  
42 • Amended section 196.173(2), F.S., which provides an exemption for deployed  
43 servicemembers. The law change extended the application deadline to June 1,  
44 2020 and removed Operation Enduring Freedom, which began October 7, 2001,  
45 and ended December 31, 2014. The amendment added Operation Juniper  
46 Shield, which began in February 2007; Operation Pacific Eagle, which began in

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1 September 2017, and Operation Martillo, which began in January 2012. See  
2 Chapter 2020-10, Sections 7, 8 and 9, Laws of Florida, (HB 7097), effective upon  
3 becoming a law on April 8, 2020, and first applicable to the 2020 ad valorem tax roll.  
4

- 5 • Provided that a value adjustment board petition filing fee is not required for  
6 petitions of the deployed servicemembers exemption, and provided additional  
7 deadlines and procedures for approval of late filed applications for the  
8 exemption. Provided that the property appraiser may grant the deployed  
9 servicemember exemption if a qualifying applicant files an application for the  
10 exemption on or before the 25th day after the property appraiser mails the notice  
11 required under section 194.011(1), F.S. If the property appraiser denies the  
12 application so filed, the applicant may file a petition with the value adjustment  
13 board on or before the 25th day after the property appraiser mails the notice  
14 required under section 194.011(1), F.S. The petitioner is not required to pay a  
15 filing fee for such petition, notwithstanding section 194.013, F.S. The value  
16 adjustment board may grant the exemption if the applicant is qualified and  
17 demonstrates extenuating circumstances, as determined by the board, which  
18 warrant granting the exemption. See Chapter 2020-10, Section 9, Laws of Florida,  
19 (HB 7097), effective upon becoming a law on April 8, 2020, and first applicable to the  
20 2020 ad valorem tax roll.  
21
- 22 • Amended section 194.035, F.S. to provide an appraisal performed by a special  
23 magistrate is not permitted as evidence in a hearing before a value adjustment  
24 board for which the special magistrate serves. An appraisal may not be submitted as  
25 evidence to a value adjustment board in any year that the person who performed the  
26 appraisal serves as a special magistrate to that value adjustment board. See Chapter  
27 2020-10, Section 4, Laws of Florida, effective July 1, 2020.  
28
- 29 • Created section 193.1557, F.S., relating to assessment of certain property damaged  
30 or destroyed by Hurricane Michael in 2018, and providing that sections  
31 193.155(4)(b), 193.1554(6)(b), or 193.1555(6)(b), F.S., relating to assessment of  
32 changes, additions or improvements, apply to such changes, additions, or  
33 improvements begun within five years after January 1, 2019. The new section  
34 193.1557, F.S., applies to 2019 through 2023 tax years and stands repealed on  
35 December 31, 2023. See Chapter 2020-10, Section 3, Laws of Florida, effective July 1,  
36 2020.  
37
- 38 • Enacted two amendments to section 196.1978(1), F.S. in Chapter 2020-10, section  
39 10, Laws of Florida, effective upon becoming a law April 8, 2020 and operating  
40 retroactive to January 1, 2020; and Chapter 2020-10, Section 11, Laws of Florida,  
41 effective January 1, 2021.  
42
- 43 • Section 10 amended section 196.1978(1), F.S., to provide, for property used to  
44 provide affordable housing, additional criteria under which vacant units are  
45 treated as exempt portions of the affordable housing property. These criteria are:  
46 if a recorded land use restriction agreement requires all residential units within

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1 the property to be used in a manner that qualifies for the exemption under this  
2 subsection and if the vacant units are being offered for rent. effective upon  
3 becoming a law and will operate retroactively to January 1, 2020. See Chapter  
4 2020-10, Section 10, Laws of Florida (CS/HB 7097).

- 5  
6 • Section 11 amended section 196.1978(1), F.S., to provide legislative intent for  
7 property used to provide affordable housing, that if the sole member of a limited  
8 liability company that owns the property is also a limited liability company that is  
9 disregarded as an entity for federal income tax purposes the property will be  
10 treated as owned by the sole member of the limited liability company that owns  
11 the limited liability company that owns the property. Also, units whose occupants'  
12 income no longer meet the income limits, but whose income met the income  
13 limits at the time they became tenants, shall be treated as exempt portions of the  
14 affordable housing property. This amendment is effective January 1, 2021. See  
15 Chapter 2020-10, Section 11, Laws of Florida (CS/HB 7097).

- 16  
17 • Created section 193.019, F.S., effective January 1, 2022, relating to the exemption  
18 for hospitals, and providing for community benefit reporting. By January 15 of each  
19 year, each applicant for exemption for hospital property shall submit to the  
20 Department a copy of the applicant's most recently filed IRS Form 990, Schedule H,  
21 with a statement certifying the county net community benefit expense is true and  
22 correct, and a schedule displaying information regarding the community benefit  
23 expense. By January 15 of each year, each county property appraiser shall calculate  
24 and submit to the Department the tax reduction resulting from the property  
25 exemption for the prior year granted pursuant to ss. 196.196 and 196.197 for each  
26 property owned by an applicant. The Department must determine if the county net  
27 community benefit expense attributed to an applicant's property in a county equals  
28 or exceeds the tax reduction resulting from the applicant's exemption for that county.  
29 If an applicant's county net community benefit expense does not equal or exceed the  
30 tax reduction from the exemption, in two consecutive years, the Department shall  
31 notify the property appraiser by March 15 to limit the exemption for the current year  
32 by multiplying it by the ratio of the net community benefit expense to the tax  
33 reduction resulting from the exemption. See Chapter 2020-10, Section 2, Laws of Florida  
34 (CS/HB 7097) effective January 1, 2022.

- 35  
36 • Created section 196.081(1)(b), F.S. to provide that a veteran or veteran's surviving  
37 spouse may receive a prorated refund of property taxes paid on property on which  
38 legal or beneficial title is acquired between January 1 and November 1. The  
39 additional requirements for the refund are that the veteran or veteran's surviving  
40 spouse:
  - 41 • receives an exemption under section 196.081, F.S., on a property for the tax  
42 year, and
  - 43 • applies for and receives an exemption on the acquired property in the next tax  
44 year under section 196.081, F.S.

45 The refund is prorated as of the date of transfer. If the property appraiser determines  
46 the veteran or spouse is entitled to an exemption under section 196.081, F.S., on the

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1 newly acquired property, the law provides for the property appraiser to make entries  
2 on the tax roll necessary to allow the prorated refund of taxes for the previous tax  
3 year. See Chapter 2020-140, Laws of Florida (CS/CS/HB 1249), effective July 1, 2020.  
4  
5

### 6 **2019 Changes to Statutory Law**

7 In 2019, a change to statutory law was enacted. This change affected administrative  
8 reviews of assessments beginning in 2019. This change is summarized below and is  
9 addressed where necessary in various modules of this training. Please refer to the  
10 chapter law and statutes to read the legislative changes in context with the surrounding  
11 statutory language. The chapter laws are available at: <http://laws.flrules.org/>  
12

13 Legislation enacted in 2019:

- 14  
15 • Created section 193.4517, Florida Statutes, to provide that for the 2019 tax roll,  
16 tangible personal property owned and operated by a farm, farm operation, or  
17 agriculture processing facility located in Okaloosa, Walton, Holmes, Washington,  
18 Bay, Jackson, Calhoun, Gulf, Gadsden, Liberty, Franklin, Leon, or Wakulla County is  
19 deemed to have a market value no greater than its value for salvage if the tangible  
20 personal property was unable to be used for at least 60 days due to the effects of  
21 Hurricane Michael. "Unable to be used" means the tangible personal property was  
22 damaged, or the farm, farm operation, or agricultural processing facility was affected  
23 to such a degree that the tangible personal property could not be used for its  
24 intended purpose. "Farm" has the same meaning as provided in s. 823.14(3)(a), F.S.  
25 and "farm operation" has the same meaning as provided in s. 823.14(3)(b), F.S. The  
26 deadline for an applicant to file an application with the property appraiser for  
27 assessment under this new law is August 1, 2019. If the property appraiser denies  
28 an application, the applicant may file, under s. 194.011(3), a petition with the value  
29 adjustment board requesting that the tangible personal property be assessed  
30 according to this law. Such petition must be filed on or before the 25th day after the  
31 mailing by the property appraiser, during the 2019 calendar year, of the notice  
32 required under s. 194.011(1). This legislation is effective July 1, 2019 and applies  
33 retroactively to January 1, 2019. See Chapter 2019-42, Section 2, Laws of Florida (HB  
34 7123).  
35  
36

### 37 **2018 Changes to Statutory Law**

38 In 2018, several changes to statutory law were enacted. Except where other dates are  
39 noted, these changes will affect administrative reviews of assessments beginning in  
40 2019. These new laws are summarized below and are addressed where necessary in  
41 various modules of this training. Please refer to the chapter law and statutes to read the  
42 legislative changes in context with the surrounding statutory language. The chapter laws  
43 are available at: <http://laws.flrules.org/>  
44

45 Legislation enacted in 2018:  
46

## 2022+ Value Adjustment Board Training - Module 1

- 1 • Created section 197.318, F.S., to provide an abatement of taxes, by a refund, for  
2 homestead residential improvements made uninhabitable from damage or  
3 destruction by Hurricane Hermine, Matthew or Irma. The legislation provides that a  
4 property owner waives a claim for abatement unless the property owner files a  
5 sworn application with the property appraiser by March 1, 2019. This statute  
6 provides detailed definitions and specific procedures for evaluating and processing  
7 an abatement. These amendments are effective March 23, 2018. See Chapter 2018-  
8 118, Sections 17 and 63, Laws of Florida (CS/HB 7087).  
9
- 10 • Amended section 194.032, F.S., to provide for value adjustment boards to hear  
11 appeals pertaining to the denial by the property appraiser of tax abatements. This  
12 amendment is effective July 1, 2018. See Chapter 2018-118, Sections 14 and 63, Laws  
13 of Florida (CS/HB 7087).  
14
- 15 • Created section 193.0237, F.S., to provide the method for assessment of multiple  
16 parcel buildings. The value of land upon which a multiple parcel building is located,  
17 regardless of ownership, may not be separately assessed and must be allocated  
18 among and included in the just value of all the parcels in the multiple parcel building.  
19 This amendment applies to assessments beginning with the 2018 tax roll. See  
20 Chapter 2018-118, Section 8, Laws of Florida (CS/HB 7087).  
21
- 22 • Created section 193.4516, F.S., to provide that tangible personal property owned  
23 and operated by a citrus fruit packing or processing facility is deemed to have a  
24 market value no greater than its value for salvage, if such property is no longer used  
25 in the operation of the facility due to Hurricane Irma (2017) or due to citrus greening.  
26 This amendment applies to the 2018 tax roll. See Chapter 2018-118, Sections 10 and 11,  
27 Laws of Florida (CS/HB 7087).  
28
- 29 • Amended section 193.461(6)(c), F.S., to provide that screened enclosed structures  
30 used in horticultural production for protection from pests and diseases or to comply  
31 with state or federal eradication or compliance agreements are a part of the average  
32 yields per acre and have no separately assessable value. See Chapter 2018-84,  
33 Section 1, Laws of Florida (CS/CS/SB 740).  
34
- 35 • Amended section 196.24, F.S., relating to qualification for an exemption, to remove  
36 the statutory requirement for an unremarried surviving spouse to have been married  
37 to a disabled veteran for at least five years on the date of the veteran's death. See  
38 Chapter 2018-118, Section 16, Laws of Florida (CS/HB 7087).  
39
- 40 • Amended section 196.173, F.S., relating to the exemption for deployed service  
41 members, to provide a December 31, 2014, ending date for Operation Enduring  
42 Freedom, which began on October 7, 2001. The amendment also removed  
43 Operation New Dawn, which began on September 1, 2010, and ended on December  
44 15, 2011, and the amendment removed Operation Odyssey Dawn, which began on  
45 March 19, 2011, and ended on October 31, 2011. See Chapter 2018-118, Section 15,  
46 Laws of Florida (CS/HB 7087).

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

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

40 ~~In 2017, several changes to statutory law were enacted. Except where other dates are~~

41 ~~noted, these changes affected administrative reviews of assessments beginning in~~

42 ~~2017. These changes are summarized below and are addressed where necessary in~~

43 ~~various modules of this training. Please refer to the chapter law and statutes to read the~~

44 ~~legislative changes in context with the surrounding statutory language. The chapter laws~~

45 ~~are available at <http://laws.flrules.org/>~~

46

## 2022+ Value Adjustment Board Training - Module 1

### 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 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~~

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1 ~~July 1, 2017, and applies to assessments and administrative reviews beginning in~~  
2 ~~2018. See Chapter 2017-36, Sections 5 and 59, Laws of Florida (HB 7109).~~

- 3
- 4 ~~• Amended section 193.624, F.S., to provide, for nonresidential real property, that 80~~  
5 ~~percent of the just value attributable to a renewable energy source device may not~~  
6 ~~be considered in determining the assessed value of the property; this provision~~  
7 ~~applies to devices installed on nonresidential property on or after January 1, 2018,~~  
8 ~~except in a fiscally constrained county for which application for comprehensive plan~~  
9 ~~amendment or planned unit development zoning is made by December 31, 2017.~~  
10 ~~This change is effective July 1, 2017, and applies to assessments and administrative~~  
11 ~~reviews beginning in 2018. See Chapter 2017-118, Sections 2 and 8, Laws of Florida~~  
12 ~~(CS/SB 90).~~

- 13
- 14 ~~• Created section 196.182, F.S., to provide an exemption, from the tangible personal~~  
15 ~~property tax, of 80 percent of the assessed value of certain renewable energy~~  
16 ~~source devices, if the device, as defined in s. 193.624, is considered tangible~~  
17 ~~personal property and:~~

18

- 19 ~~(a) Is installed on real property on or after January 1, 2018;~~

20 ~~(b) Was installed before January 1, 2018, to supply a municipal electric utility located~~  
21 ~~within a consolidated government; or~~

22 ~~(c) Was installed after August 30, 2016, on municipal land as part of a described~~  
23 ~~project supplying a municipal electric utility for certain purposes.~~

24

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

### **Statutory Law Effective Beginning With 2009 Assessments**

30

31

32

33

34

35

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

39

40

41 A complete copy of this legislation is available at the following web address:  
42 [http://laws.flrules.org/files/Ch\\_2009-121.pdf](http://laws.flrules.org/files/Ch_2009-121.pdf)

43

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

45

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

3  
4 This law provides important benefits to taxpayers. Boards, board attorneys, and special  
5 magistrates must comply with the law to ensure its implementation.

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

### 10 11 12 **Administrative Rules and Forms**

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

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

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

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

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

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

### 31 32 33 **Uniform Policies and Procedures Manual and Accompanying** 34 **Documents**

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

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

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

45  
46 Along with the accompanying documents listed below, the Uniform Policies and

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1 Procedures Manual must be made available on the existing website of the Board clerk  
2 in each of the 67 counties.

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

6  
7 The Uniform Policies and Procedures Manual and Accompanying Documents:  
8 The three sets of documents described below are available on the Department's  
9 website at <http://floridarevenue.com/property/Pages/VAB.aspx>

- 10  
11 1. The "Uniform Policies and Procedures Manual" for value adjustment boards, which is  
12 composed of the following items:  
13  
14 a) Taxpayer rights as provided in Florida Statutes and the recently adopted rules;  
15  
16 b) The recently adopted rules of procedure for value adjustment board proceedings;  
17  
18 c) Recently adopted forms for value adjustment boards;  
19  
20 d) Florida Statutes regarding value adjustment board procedures; and  
21  
22 e) A notice regarding the use of case law.

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

- 26  
27 2. "Other Legal Resources Including Statutory Criteria," and  
28  
29 3. "Reference Materials Including Guidelines."

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

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

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

36  
37  
38 An opinion of the Florida Attorney General has concluded that the official acts of both  
39 Boards and special magistrates are subject to Florida's Government-in-the-Sunshine  
40 law found in section 286.011, F.S. See Attorney General Opinion [2010-15](#).

41  
42  
43 In the opinion, the Attorney General recognized that a value adjustment board is a  
44 quasi-judicial governmental body and that a special magistrate is a quasi-judicial officer  
45 who "stands in the shoes" of the Board in carrying out decision-making duties delegated  
46 by the Board. See Attorney General Opinion [2010-15](#).

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

4  
5 At one of its organizational meetings held prior to conducting hearings, the Board shall  
6 make available to the public, special magistrates, and Board members the requirements  
7 of Florida's Government in the Sunshine / open government laws including information  
8 on where to obtain the current Government-in-the-Sunshine manual. See Rule 12D-  
9 9.013(1)(g), F.A.C.

10  
11 Florida's Government-in-the-Sunshine Manual is available at the following internet link:

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

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

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

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

24  
25 The Department's training for special magistrates shall be open to the public. See Rule  
26 12D-9.012(2), F.A.C.

### 27 28 29 **Complete Text of Specific Legal Provisions for Taxpayer Rights**

30 Florida law provides specific rights for property taxpayers.

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

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

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

### 39 40 41 **Taxpayer Rights in Section 192.0105, F.S.**

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

44  
45 *"There is created a Florida Taxpayer's Bill of Rights for property taxes and assessments*  
46 *to guarantee that the rights, privacy, and property of the taxpayers of this state are*

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

13  
14 (1) *THE RIGHT TO KNOW.—*

15  
16 (a) *The right to be sent a notice of proposed property taxes and proposed or adopted*  
17 *non-ad valorem assessments (see ss. 194.011(1), 200.065(2)(b) and (d) and (13)(a),*  
18 *and 200.069). The notice must also inform the taxpayer that the final tax bill may*  
19 *contain additional non-ad valorem assessments (see s. 200.069(9)).*  
20

21 (b) *The right to notification of a public hearing on each taxing authority's tentative*  
22 *budget and proposed millage rate and advertisement of a public hearing to finalize the*  
23 *budget and adopt a millage rate (see s. 200.065(2)(c) and (d)).*  
24

25 (c) *The right to advertised notice of the amount by which the tentatively adopted*  
26 *millage rate results in taxes that exceed the previous year's taxes (see s. 200.065(2)(d)*  
27 *and (3)). The right to notification of a comparison of the amount of the taxes to be levied*  
28 *from the proposed millage rate under the tentative budget change, compared to the*  
29 *previous year's taxes, and also compared to the taxes that would be levied if no budget*  
30 *change is made (see ss. 200.065(2)(b) and 200.069(2), (3), (4), and (8)).*  
31

32 (d) *The right that the adopted millage rate will not exceed the tentatively adopted*  
33 *millage rate. If the tentative rate exceeds the proposed rate, each taxpayer shall be*  
34 *mailed notice comparing his or her taxes under the tentatively adopted millage rate to*  
35 *the taxes under the previously proposed rate, before a hearing to finalize the budget*  
36 *and adopt millage (see s. 200.065(2)(d)).*  
37

38 (e) *The right to be sent notice by first-class mail of a non-ad valorem assessment*  
39 *hearing at least 20 days before the hearing with pertinent information, including the total*  
40 *amount to be levied against each parcel. All affected property owners have the right to*  
41 *appear at the hearing and to file written objections with the local governing Board (see*  
42 *s. 197.3632(4)(b) and (c) and (10)(b)2.b.).*  
43

44 (f) *The right of an exemption recipient to be sent a renewal application for that*  
45 *exemption, the right to a receipt for homestead exemption claim when filed, and the*

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1 right to notice of denial of the exemption (see ss. 196.011(6), 196.131(1), 196.151, and  
2 196.193(1)(c) and (5)).

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

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

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

24  
25 (j) The right to be sent a notice when a petition has been filed with the court for an  
26 order to seize and sell property and the right to be mailed notice, and to be served  
27 notice by the sheriff, before the date of sale, that application for tax deed has been  
28 made and property will be sold unless back taxes are paid (see ss. 197.413(5),  
29 197.502(4)(a), and 197.522(1)(a) and (2)).

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

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

39  
40 (2) THE RIGHT TO DUE PROCESS.—

41  
42 (a) The right to an informal conference with the property appraiser to present facts the  
43 taxpayer considers to support changing the assessment and to have the property  
44 appraiser present facts supportive of the assessment upon proper request of any  
45 taxpayer who objects to the assessment placed on his or her property (see s.  
46 194.011(2)).

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- 1  
2 (b) *The right to petition the value adjustment board over objections to assessments,*  
3 *denial of exemption, denial of agricultural classification, denial of historic classification,*  
4 *denial of high-water recharge classification, disapproval of tax deferral, and any*  
5 *penalties on deferred taxes imposed for incorrect information willfully filed. Payment of*  
6 *estimated taxes does not preclude the right of the taxpayer to challenge his or her*  
7 *assessment (see ss. 194.011(3), 196.011(6) and (9)(a), 196.151, 196.193(1)(c) and (5),*  
8 *193.461(2), 193.503(7), 193.625(2), 197.2425, 197.301(2), and 197.2301(11)).*  
9  
10 (c) *The right to file a petition for exemption or agricultural classification with the value*  
11 *adjustment board when an application deadline is missed, upon demonstration of*  
12 *particular extenuating circumstances for filing late (see ss. 193.461(3)(a) and*  
13 *196.011(1), (7), (8), and (9)(e)).*  
14  
15 (d) *The right to prior notice of the value adjustment board’s hearing date, the right to*  
16 *the hearing at the scheduled time, the right to the hearing at the scheduled time, and*  
17 *the right to have the hearing rescheduled if the hearing is not commenced within a*  
18 *reasonable time, not to exceed 2 hours, after the scheduled time (see s. 194.032(2)).*  
19  
20 (e) *The right to notice of date of certification of tax rolls and receipt of property record*  
21 *card if requested (see ss. 193.122(2) and (3) and 194.032(2)).*  
22  
23 (f) *The right, in value adjustment board proceedings, to have all evidence presented*  
24 *and considered at a public hearing at the scheduled time, to be represented by a person*  
25 *specified in s. 194.034(1)(a), (b), or (c), to have witnesses sworn and cross-examined,*  
26 *and to examine property appraisers or evaluators employed by the board who present*  
27 *testimony (see ss. 194.034(1)(d) and (4), and 194.035(2)).*  
28  
29 (g) *The right to be sent a timely written decision by the value adjustment board*  
30 *containing findings of fact and conclusions of law and reasons for upholding or*  
31 *overturning the determination of the property appraiser, and the right to advertised*  
32 *notice of all board actions, including appropriate narrative and column descriptions, in*  
33 *brief and nontechnical language (see ss. 194.034(2) and 194.037(3)).*  
34  
35 (h) *The right at a public hearing on non-ad valorem assessments or municipal special*  
36 *assessments to provide written objections and to provide testimony to the local*  
37 *governing board (see ss. 197.3632(4)(c) and 170.08).*  
38  
39 (i) *The right to bring action in circuit court to contest a tax assessment or appeal value*  
40 *adjustment board decisions to disapprove exemption or deny tax deferral (see ss.*  
41 *194.036(1)(c) and (2), 194.171, 196.151, and 197.2425.*  
42  
43 (3) **THE RIGHT TO REDRESS.—**  
44  
45 (a) *The right to discounts for early payment on all taxes and non-ad valorem*  
46 *assessments collected by the tax collector, except for partial payments as defined in s.*

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1 197.374, the right to pay installment payments with discounts, and the right to pay  
2 delinquent personal property taxes under a payment program when implemented by the  
3 county tax collector (see ss. 197.162, 197.3632(8) and (10)(b)3., 197.222(1), and  
4 197.4155).

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

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

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

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

20  
21 (f) The right to redeem real property and redeem tax certificates at any time before full  
22 payment for a tax deed is made to the clerk of the court, including documentary stamps  
23 and recording fees, and the right to have tax certificates canceled if sold where taxes  
24 had been paid or if other error makes it void or correctable. Property owners have the  
25 right to be free from contact by a certificateholder for 2 years after April 1 of the year the  
26 tax certificate is issued (see ss. 197.432(13) and (14), 197.442(1), 197.443, and  
27 197.472(1) and (6)).

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

### 34 35 (4) THE RIGHT TO CONFIDENTIALITY.—

36  
37 (a) The right to have information kept confidential, including federal tax information, ad  
38 valorem tax returns, social security numbers, all financial records produced by the  
39 taxpayer, Form DR-219 returns for documentary stamp tax information, and sworn  
40 statements of gross income, copies of federal income tax returns for the prior year,  
41 wage and earnings statements (W-2 forms), and other documents (see ss. 192.105,  
42 193.074, 193.114(5), 195.027(3) and (6), and 196.101(4)(c)).

43  
44 (b) The right to limiting access to a taxpayer's records by a property appraiser, the  
45 Department of Revenue, and the Auditor General only to those instances in which it is

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1 *determined that such records are necessary to determine either the classification or the*  
2 *value of taxable nonhomestead property (see s. 195.027(3)).”*

3  
4 **History.**—ss. 11, 15, ch. 2000-312; s. 7, ch. 2001-137; s. 1, ch. 2002-18; s. 2, ch. 2003-34; s. 13,  
5 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.  
6 2010-5; s. 53, ch. 2011-151; s. 2, ch. 2012-193; s. 1, ch. 2016-128.

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

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

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

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

17  
18 *(2) These rights include:*

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

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

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

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

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

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

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

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## **Links to Resources on the Internet**

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

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

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

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

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

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

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

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

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

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

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

<https://floridarevenue.com/TaxLaw/Pages/results.aspx#Default=%7B%22k%22%3A%22%22%2C%22r%22%3A%5B%7B%22n%22%3A%22TLLType%22%2C%22t%22%3A%5B%22%5C%22%2C%22%22%3A%22and%22%2C%22k%22%3Afalse%2C%22m%22%3Anull%7D%5D%2C%22o%22%3A%22and%22%2C%22k%22%3Afalse%2C%22m%22%3Anull%7D%5D%2C%22l%22%3A1033%7D>

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

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

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

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

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

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

Attorney General Opinions on the internet at:

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

Florida Statutes on the internet at:

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

## 2022+ Value Adjustment Board Training - Module 1

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

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

**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;*

## 2022+ Value Adjustment Board Training - Module 2

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

## 2022+ Value Adjustment Board Training - Module 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2022+ Value Adjustment Board Training - Module 2

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

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

21

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

24

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

28

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

32

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

36

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

41

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

46

## 2022+ Value Adjustment Board Training - Module 2

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

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

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

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

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

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

### **The Role of the Clerk of the Value Adjustment Board**

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

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

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

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

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

46

## 2022+ Value Adjustment Board Training - Module 2

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

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

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

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

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

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

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

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

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

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

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

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

46

## 2022+ Value Adjustment Board Training - Module 2

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

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

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

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

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

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

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

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

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

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

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

40  
41 *(a) All filed documents;*

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

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

46

## 2022+ Value Adjustment Board Training - Module 2

1 (d) Any meeting minutes; and

2

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

5

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

8

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

11

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

13

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

16

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

21

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

24

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

28

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

32

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

35

36

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

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

40

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

42

43 1. Must be an attorney in private practice;

44

45 2. Must not be employed by government; and

46

## 2022+ Value Adjustment Board Training - Module 2

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

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

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

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

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

18  
19 Bulletin 2008-12

20 [https://floridarevenue.com/TaxLaw/Documents/OTH-78289\\_PTO%20BUL%2008-  
21 12.pdf](https://floridarevenue.com/TaxLaw/Documents/OTH-78289_PTO%20BUL%2008-12.pdf)

22  
23 Bulletin 2008-18

24 [https://floridarevenue.com/TaxLaw/Documents/OTH-78295\\_PTO%20BUL%2008-  
25 18.pdf](https://floridarevenue.com/TaxLaw/Documents/OTH-78295_PTO%20BUL%2008-18.pdf)

26  
27 The Florida Attorney General has issued an opinion regarding the qualifications for  
28 Board legal counsel. See AGO [2008-55](#).

### 29 30 31 **The Role of Legal Counsel to the Value Adjustment Board**

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

33  
34 *"The board legal counsel shall have the responsibilities listed below consistent with the  
35 provisions of law.*

36  
37 (a) *The primary role of the board legal counsel shall be to advise the board on all  
38 aspects of the value adjustment board review process to ensure that all actions  
39 taken by the board and its appointees meet the requirements of law.*

40  
41 (b) *Board legal counsel shall advise the board in a manner that will promote and  
42 maintain a high level of public trust and confidence in the administrative review  
43 process.*  
44

## 2022+ Value Adjustment Board Training - Module 2

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

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

24

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

28

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

32

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

35

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

38

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

41

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

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

45

46

## 2022+ Value Adjustment Board Training - Module 2

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**

7  
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:*

## 2022+ Value Adjustment Board Training - Module 2

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

14 Rule 12D-9.010(4)(d)1., F.A.C., provides that a special magistrate appointed to hear  
15 issues of exemptions, classifications, portability assessment difference transfers,  
16 changes of ownership under section 193.155(3), F.S., changes of ownership or control  
17 under section 193.1554(5) or 193.1555(5), F.S., or a qualifying improvement  
18 determination under section 193.1555(5), F.S., must have met one of the following  
19 requirements:  
20

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

28 Rule 12D-9.010(4)(d)2., F.A.C., provides that a special magistrate appointed to hear  
29 petitions regarding the valuation of real estate shall be a state certified real estate  
30 appraiser and must have met one of the following requirements:  
31

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

38 A real property valuation special magistrate must be certified under Chapter 475, Part II,  
39 F.S. See Rule 12D-9.010(4)(d)2., F.A.C.  
40

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

## 2022+ Value Adjustment Board Training - Module 2

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

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

- 8  
9 1. Have not less than five years of experience in tangible personal property valuation  
10 and have received the Department's training; or  
11  
12 2. Have not less than three years of experience in tangible personal property valuation  
13 and have completed the Department's training including the exam.

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

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

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

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

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

30 The Florida Attorney General has recognized that:

- 31  
32 1. A special magistrate is a quasi-judicial officer who "stands in the shoes" of the Board  
33 in carrying out decision-making duties delegated by the Board; and  
34  
35 2. The official acts of the special magistrate are subject to Florida's Government-in-the-  
36 Sunshine law in section 286.011, F.S. See Attorney General Opinion [2010-15](#).

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

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

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

## 2022+ Value Adjustment Board Training - Module 2

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

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

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

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

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

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

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

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

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

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

45

## 2022+ Value Adjustment Board Training - Module 2

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

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

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

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

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

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

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

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

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

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

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

## 2022+ Value Adjustment Board Training - Module 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2022+ Value Adjustment Board Training - Module 2

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

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

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

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

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

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

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## Module 3: Procedures Before the Hearing

30  
31  
32

### 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
- Persons Authorized to Sign and File Petitions
- Single Joint Petition by a Condominium Association, a Cooperative Association, or a Homeowners' Association on Behalf of Association Members Who Own Units or Parcels
- 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

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### 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

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

### **Avoiding Conflicts of Interest**

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

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

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

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

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

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

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

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

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

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

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

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

## 2022+ Value Adjustment Board Training - Module 3

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

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

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

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

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

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

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

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

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

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

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

40  
41 More information on avoiding conflicts of interest is presented in Module 4 under the  
42 section titled "Disqualification or Recusal of Special Magistrates or Board Members."  
43  
44

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

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

4  
5 \* The Board shall hold this organizational meeting prior to the holding of Board  
6 hearings. See Rule 12D-9.013(1), F.A.C.

7  
8 \* The Board shall announce its tentative schedule, taking into consideration the  
9 number of petitions filed, the possible need to reschedule, and the requirement that  
10 the Board stay in session until all petitions have been heard. See Rule 12D-9.013(2),  
11 F.A.C.

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

16  
17 Rule 12D-9.013(1), F.A.C., requires the Board to do the following 12 items at one of its  
18 organizational meetings.

- 19  
20 1. Introduce the members of the Board and provide contact information;
- 21  
22 2. Introduce the Board clerk or any designee of the Board clerk and provide the Board  
23 clerk's contact information;
- 24  
25 3. Appoint or ratify the private Board legal counsel. At the meeting at which Board legal  
26 counsel is appointed, this item shall be the first order of business;
- 27  
28 4. Appoint or ratify special magistrates, if the Board will be using them for that year;
- 29  
30 5. Make available to the public, special magistrates, and Board members, Rule  
31 Chapter 12D-9, F.A.C., containing the uniform rules of procedure for hearings before  
32 value adjustment boards and special magistrates (if applicable), and the associated  
33 forms that have been adopted by the Department;
- 34  
35 6. Make available to the public, special magistrates, and Board members, Rule  
36 Chapter 12D-10, F.A.C., containing the rules applicable to the requirements for  
37 hearings and decisions;
- 38  
39 7. Make available to the public, special magistrates and Board members the  
40 requirements of Florida's Government-in-the Sunshine/open government laws  
41 including information on where to obtain the current Government-in-the-Sunshine  
42 manual;
- 43  
44 8. Discuss, take testimony on and adopt or ratify with any required revision or  
45 amendment any local administrative procedures and forms of the Board.
- 46

## 2022+ Value Adjustment Board Training - Module 3

- 1 a) Such procedures must be ministerial in nature and not be inconsistent with  
2 governing statutes, case law, attorney general opinions, or rules of the  
3 Department.  
4
- 5 b) All local administrative procedures and forms of the Board or special magistrates  
6 shall be made available to the public and shall be accessible on the Board clerk's  
7 website, if any;  
8
- 9 9. Discuss general information on Florida's property tax system, respective roles within  
10 this system, taxpayer opportunities to participate in the system, and property  
11 taxpayer rights;  
12
- 13 10. Make available to the public, special magistrates and Board members, Rules 12D-  
14 51.001, 51.002, 51.003, F.A.C., and Chapters 192 through 195, F.S., as reference  
15 information containing the guidelines and statutes applicable to assessments and  
16 assessment administration;  
17
- 18 11. Adopt or ratify by resolution any filing fee for petitions for that year, in an amount  
19 not to exceed \$15; and  
20
- 21 12. For purposes of this rule, making available to the public means, in addition to  
22 having copies at the meeting, the Board may refer to a website containing copies of  
23 such documents.  
24

25 The Board may hold additional meetings for the purpose of addressing administrative  
26 matters. See Rule 12D-9.013(3), F.A.C.  
27  
28

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

30 The entire text of Rule 12D-9.014, F.A.C., titled "Prehearing Checklist," is presented  
31 below in italics.  
32

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

36  
37 *(a) The composition of the board is as provided by law;*

38  
39 *(b) Board legal counsel has been appointed as provided by law;*

40  
41 *(c) Board legal counsel meets the requirements of Section 194.015, F.S.;*

42  
43 *(d) No board members represent other government entities or taxpayers in any  
44 administrative or judicial review of property taxes, and citizen members are not  
45 members or employees of a taxing authority, during their membership on the board;*  
46

## 2022+ Value Adjustment Board Training - Module 3

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

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

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

12  
13 (h) The department's uniform policies and procedures manual is available on the  
14 existing website of the board clerk, if the board clerk has a website;

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

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

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

31  
32 (l) All procedures and forms of the board or special magistrate are in compliance with  
33 Chapter 194, F.S., and this rule chapter;

34  
35 (m) The board is otherwise in compliance with Chapter 194, F.S., and this rule chapter;  
36 and

37  
38 (n) Notice has been given to the chief executive officer of each municipality as provided  
39 in Section 193.116, F.S.

40  
41 (2) The board clerk shall notify the board legal counsel and the board chair of any action  
42 needed to comply with subsection (1).”  
43  
44

## 2022+ Value Adjustment Board Training - Module 3

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

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

4  
5 \* These forms are available on the Department's website at the following link:

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

7  
8 \* The Department, the Board clerk, and the property appraiser or tax collector shall  
9 make available to petitioners the blank petition forms adopted or approved by the  
10 Department. See Rule 12D-9.015(5), F.A.C.

11  
12 \* Current and up-to-date petition forms must be used.

13  
14 A "completed" petition is one that provides information for all the required elements that  
15 are displayed on the Department's form and that is accompanied by the appropriate  
16 filing fee if required. See Rules 12D-9.015(12)(b) and 12D-9.015(2), F.A.C.

17  
18 Under Rule 12D-9.015(2), F.A.C., petition forms must contain the following elements so  
19 that when filed with the Board clerk the form will be considered a "completed" petition as  
20 indicated below:

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

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- 1 \* Contain a checkbox for the taxpayer to indicate that he or she has authorized a  
2 compensated or uncompensated representative to act on the taxpayer's behalf;  
3  
4 \* Contain a signature field for an authorized employee or representative to sign the  
5 petition, when applicable, along with the authorized employee's or  
6 representative's signed certification under penalty of perjury that he or she has  
7 the taxpayer's authorization to file the petition on the taxpayer's behalf together  
8 with checkboxes for professional information and spaces for license numbers;  
9  
10 \* Contain a signature field for a compensated or uncompensated representative,  
11 who is not an employee of the taxpayer or of an affiliated entity, and not an  
12 attorney who is a member of the Florida Bar, a real estate appraiser licensed or  
13 certified under Chapter 475, Part II, F.S., a real estate broker licensed under  
14 Chapter 475, Part I, F.S., or a certified public accountant licensed under Chapter  
15 473, F.S., for such representative to sign the petition, and contain checkboxes,  
16 for a compensated representative to indicate he or she is attaching a power of  
17 attorney from the taxpayer, and for an uncompensated representative to indicate  
18 he or she is attaching a written authorization from the taxpayer;  
19

- 20 7. Contain a space for the petitioner to indicate whether the property is four or less  
21 residential units or another property type, provided the Board clerk shall accept the  
22 petition even if this space is not filled in; and  
23  
24 8. Contain a statement that a tangible personal property assessment may not be  
25 contested until a return required by section 193.052, F.S., is timely filed.  
26

27 If the petition indicates that the taxpayer has authorized a compensated representative,  
28 who is not acting as a licensed or certified professional listed in Rule 12D-9.018(3)(a),  
29 F.A.C., to act on the taxpayer's behalf, at the time of filing the petition must either be  
30 signed by the taxpayer or be accompanied by a power of attorney. See Rule 12D-  
31 9.015(2)(g), F.A.C.  
32

33 If the petition indicates that the taxpayer has authorized an uncompensated  
34 representative to act on the taxpayer's behalf, at the time of filing the petition must  
35 either be signed by the taxpayer or be accompanied by the taxpayer's written  
36 authorization. See Rule 12D-9.015(2)(h), F.A.C.  
37

38 The petition form shall provide notice to the petitioner that the person signing the  
39 petition becomes the agent of the taxpayer for the purpose of serving process to obtain  
40 personal jurisdiction over the taxpayer for the entire Board proceeding, including any  
41 appeals to circuit court of a Board decision by the property appraiser or tax collector.  
42 See Rule 12D-9.015(3), F.A.C.  
43

44 The petition form shall provide notice to the petitioner of his or her right to an informal  
45 conference with the property appraiser and that this conference is not a prerequisite to

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1 filing a petition nor does it alter the time frame for filing a timely petition. See Rule 12D-  
2 9.015(4), F.A.C.

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

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

11  
12 Under Rule 12D-9.015(12)(b), F.A.C., a completed petition is one that:

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

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

24  
25 If an incomplete petition is received, the Board clerk shall notify the petitioner and give  
26 the petitioner an opportunity to complete and re-file the petition within 10 calendar days  
27 from the date the notice of incomplete petition is mailed. See Rules 12D-9.007(6) and 12D-  
28 9.015(12)(a), F.A.C.

29  
30 \* A completed petition shall be considered timely if completed and re-filed within the  
31 time frame provided in the Board clerk's notice of incomplete petition. See Rule 12D-  
32 9.015(12)(a), F.A.C.

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

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

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

44

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

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

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

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

1 which is incorporated by reference in Rule 12D-16.002, F.A.C., as a form available to  
2 taxpayers for granting the written authorization.  
3  
4

### 5 **Single Joint Petition by a Condominium Association, a Cooperative** 6 **Association, or a Homeowners' Association on Behalf of Association** 7 **Members Who Own Units or Parcels**

8  
9 **Note:** Legislation enacted in 2021 amended section 194.011(3), F.S., to clarify that a  
10 condominium association, as defined in s. 718.103, a cooperative association as  
11 defined in s. 719.103, or any homeowners' association as defined in s. 723.075, with  
12 approval of its board of administration or directors, may file with the value adjustment  
13 board a single joint petition on behalf of any association members who own units or  
14 parcels of property which the property appraiser determines are substantially similar  
15 with respect to location, proximity to amenities, number of rooms, living area, and  
16 condition. Requires an association to notify its members of its intention to petition the  
17 value adjustment board and include in the notice a statement that, by not opting out of  
18 the petition, the unit or parcel owner agrees that the association shall also represent the  
19 unit or parcel owner in any related proceedings. Amendments created provisions for the  
20 association to continue to represent owners in subsequent circuit court proceedings. See  
21 Chapter 2021-209, Section 1, Laws of Florida, (HB 649), effective July 1, 2021.  
22  
23

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

25 If duplicate petitions are filed on the same property, the Board clerk shall contact the  
26 taxpayer and all petitioners to identify whether a person has the taxpayer's authorization  
27 to file a petition and represent the taxpayer, and resolve the issue in accordance with  
28 Rule Chapter 12D-9, F.A.C. See Rule 12D-9.015(11), F.A.C.  
29

30 If a taxpayer notifies the Board that an unauthorized petition has been filed for the  
31 taxpayer's property, the Board may require the person who filed the petition to provide  
32 to the Board, before a hearing is held on such petition, the taxpayer's written  
33 authorization for the person to file the petition and represent the taxpayer. See Rule 12D-  
34 9.015(10)(a), F.A.C.  
35

36 If the Board finds that an employee or a professional listed in paragraph 12D-  
37 9.018(3)(a), F.A.C., knowingly and willfully filed a petition not authorized by the  
38 taxpayer, the Board shall require such employee or professional to provide to the Board  
39 clerk, before any petition filed by that employee or professional is heard, the taxpayer's  
40 written authorization for the employee or professional to represent the taxpayer. This  
41 Board requirement shall extend for one year after the Board's imposition of the  
42 requirement. See Rule 12D-9.015(10)(b), F.A.C.  
43  
44

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

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

2

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

5

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

9

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

15

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

18

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

32

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

35

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

39

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

43

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

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

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

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

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

18  
19 A person who files a petition may timely file an action in circuit court to preserve the  
20 right to proceed in circuit court (See sections 193.155(8)(l), 194.036, 194.171(2), and  
21 196.151, F.S.). See Rule 12D-9.015(14)(f), F.A.C.

### 22 23 24 **Acknowledgment of Timely Filed Petitions**

25 The Board clerk shall accept all completed petitions, as defined by statute and Rule  
26 12D-9.015(2), F.A.C. See Rule 12D-9.015(15), F.A.C.

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

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

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

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

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**Requirements for Filing and Service of Documents**

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

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

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

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

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

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

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

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

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

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- 1
- 2 1. Inform the filing party of the requirement to provide a copy of the document to the
- 3 other party; or
- 4
- 5 2. Shall exercise care to ensure that a copy is provided to the other party and that no
- 6 ex parte communication occurs.
- 7
- 8

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

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

- 11
- 12
- 13 1. The other party being present; or
- 14
- 15 2. Providing a copy of any written communication to the other party. See Rule 12D-
- 16 9.017(1)(a), F.A.C.
- 17
- 18 \* In this context, “participant” includes the petitioner, the property appraiser, the Board
- 19 clerk, the special magistrate, a Board member, any other person directly or indirectly
- 20 interested in the proceeding, and anyone authorized to act on behalf of any party.
- 21
- 22 \* This rule shall not prohibit internal communications among the Board clerk, Board,
- 23 special magistrates, and Board legal counsel, regarding internal operations of the
- 24 Board and other administrative matters. See Rule 12D-9.017(1)(b), F.A.C.
- 25
- 26 \* The special magistrate is specifically authorized to communicate with the Board’s
- 27 legal counsel or Board clerk on legal matters or other issues regarding a petition.
- 28 See Rule 12D-9.017(1)(b), F.A.C.
- 29

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

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

- 38
- 39 1. All parties have been notified about the ex parte communication;
- 40
- 41 2. No party objects to consideration of the communication; and
- 42
- 43 3. All parties have an opportunity during the hearing to cross-examine, object, or
- 44 otherwise address the communication.
- 45
- 46

1 **Representation of the Taxpayer**

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

5  
6 The taxpayer's representative may present testimony and other evidence in support of  
7 the petition. See Rule 12D-9.018(1), F.A.C.

8  
9 The authorized individual, agent, or legal entity that signs the petition becomes the  
10 agent of the taxpayer for the purpose of serving process to obtain jurisdiction over the  
11 taxpayer for the entire value adjustment board proceedings, including any appeals of a  
12 board decision by the property appraiser or tax collector. However, this does not  
13 authorize the individual, agent, or legal entity to receive or access the taxpayer's  
14 confidential information without written authorization from the taxpayer. See Rule 12D-  
15 9.018(2), F.A.C.

16  
17 Rule 12D-9.018(3), F.A.C., provides that, subject to petition filing requirements, a  
18 taxpayer may be represented before the Board by one of the following persons:

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

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

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

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1 F.A.C., as a form available to taxpayers for granting the power of attorney. See Rule  
2 12D-9.018(3)(b), F.A.C.

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

15  
16 The board clerk may require the use of an agent or representative number to facilitate  
17 scheduling of hearings as long as such use is not inconsistent with this rule chapter.  
18 See Rule 12D-9.018(4), F.A.C.

### 19 20 21 **Procedures for Scheduling Hearings**

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

24  
25 Under Rule 12D-9.019(1)(b), F.A.C., when scheduling hearings, the Board clerk shall  
26 consider the following:

- 27
- 28 1. The petitioner's anticipated amount of time if indicated on the petition;
  - 29
  - 30 2. The experience of the petitioner;
  - 31
  - 32 3. The complexity of the issues or the evidence to be presented;
  - 33
  - 34 4. The number of petitions/parcels to be heard at a single hearing;
  - 35
  - 36 5. The efficiency or difficulty for the petitioner of grouping multiple hearings for a single  
37 petitioner on the same day; and
  - 38
  - 39 6. The likelihood of withdrawals, cancellations of hearings or failure to appear.

40  
41 Upon request of a party, the Board clerk shall consult with the petitioner and the  
42 property appraiser or tax collector to ensure that, within the Board clerk's judgment, an  
43 adequate amount of time is provided for presenting and considering evidence. See Rule  
44 12D-9.019(1)(c), F.A.C.

45

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

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

18  
19 For petitions related to valuation issues, no hearing shall be scheduled prior to  
20 completion by the governing body of each taxing authority of the public hearing on the  
21 tentative budget and proposed millage rate. See Rule 12D-9.019(2), F.A.C.

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

22  
23  
24 The Board clerk shall notify each petitioner of the scheduled time of appearance at the  
25 hearing, and shall simultaneously notify the property appraiser or tax collector. See Rule  
26 12D-9.019(1)(a), F.A.C.

27  
28  
29 \* The Board clerk may electronically send this notification to the petitioner, if the  
30 petitioner indicates on his or her petition this means of communication for receiving  
31 notices, materials, and communications. See Rule 12D-9.019(1)(a), F.A.C.

32  
33 The notice of hearing shall be in writing, and shall be delivered by regular or certified  
34 U.S. mail or personal delivery, or in the manner requested by the petitioner on Form  
35 DR-486. See Rule 12D-9.019(3)(a), F.A.C.

36  
37 \* The hearing notice shall be received by the petitioner no less than twenty-five (25)  
38 calendar days prior to the day of the scheduled appearance at the hearing. See Rule  
39 12D-9.019(3)(a), F.A.C.

40  
41 The form for the notice of hearing shall meet the requirements of the Department's rules  
42 and is subject to approval by the Department. See Rule 12D-9.019(3)(a), F.A.C.

43  
44 \* The Department provides Form DR-481 (Value Adjustment Board – Notice of  
45 Hearing) as a format for the hearing notice.

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

3  
4 \* A current and up-to-date form must be used.

5  
6 Under Rule 12D-9.019(3)(b), F.A.C., the hearing notice shall include the following  
7 elements:

- 8  
9 1. The parcel number, account number or legal address of all properties being heard at  
10 the scheduled hearing;
- 11  
12 2. The type of hearing scheduled;
- 13  
14 3. The date and time of the scheduled hearing; however, if the petition has been  
15 scheduled to be heard within a block of time, the beginning and ending of that block  
16 of time shall be indicated on the notice;
- 17  
18 4. The time reserved, or instructions on how to obtain this information;
- 19  
20 5. The location of the hearing, including the hearing room number if known, together  
21 with Board clerk contact information including office address and telephone number,  
22 for petitioners to request assistance in finding hearing rooms;
- 23  
24 6. Instructions on how to obtain a list of the potential special magistrates for the type of  
25 petition in question;
- 26  
27 7. A statement of the petitioner's right to participate in the exchange of evidence with  
28 the property appraiser;
- 29  
30 8. A statement that the petitioner has the right to reschedule the hearing a single time  
31 for good cause as defined in Section 194.032(2)(a), F.S.;
- 32  
33 9. A statement that Section 194.032(2)(a), F.S., defines "good cause" as  
34 circumstances beyond the control of the person seeking to reschedule the hearing  
35 which reasonably prevent the party from having adequate representation at the  
36 hearing;
- 37  
38 10. Instructions on bringing copies of evidence;
- 39  
40 11. Any information necessary to comply with federal or state disability or accessibility  
41 acts; and
- 42  
43 12. Information regarding where the petitioner may obtain a copy of the uniform rules  
44 of procedure.
- 45  
46

1 **Procedures for Rescheduling Hearings**

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

7 Rule 12D-9.019(4) further provides the following:  
8

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

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

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

27 \* Form DR-485WCN is designated by the Department and may be used for giving this  
28 notice.  
29

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

33 \* A current and up-to-date form must be used.  
34

35 If a hearing is rescheduled, the deadlines for the exchange of evidence shall be  
36 computed from the new hearing date, if time permits. See Rule 12D-9.019(6), F.A.C.  
37

38 If a petitioner's hearing does not commence as scheduled, the Board clerk is authorized  
39 to reschedule a petition. See Rule 12D-9.019(7)(a), F.A.C.  
40

41 \* In no event shall a petitioner be required to wait more than a reasonable time after  
42 the scheduled time to be heard or, if the petition has been scheduled to be heard  
43 within a block of time, after the beginning of the block of time. A reasonable time  
44 must not exceed two hours. See Rule 12D-9.019(7)(b), F.A.C.  
45

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- 1 \* The Board clerk is authorized to find that a reasonable time, not to exceed two  
2 hours, has elapsed based on other commitments, appointments, or hearings of the  
3 petitioner, lateness in the day, and other hearings waiting to be heard earlier than  
4 the petitioner's hearing with the Board or special magistrate. See Rule 12D-  
5 9.019(7)(b), F.A.C.  
6
- 7 \* If his or her petition has not been heard within a reasonable time (not to exceed two  
8 hours), the petitioner may request to be heard immediately. See Rule 12D-9.019(7)(b),  
9 F.A.C.  
10
- 11 \* If the Board clerk finds that a reasonable time has elapsed and petitioner is not  
12 heard, the Board clerk shall reschedule the petitioner's hearing. See Rule 12D-  
13 9.019(7)(b), F.A.C.  
14
- 15 \* A rescheduling of a hearing under Rule 12D-9.019(7), F.A.C., is not a request by a  
16 party to reschedule a hearing for good cause under Rule 12D-9.019(4), F.A.C. See  
17 Rule 12D-9.019(7)(c), F.A.C.  
18
- 19 \* A petitioner is not required to wait any length of time as a prerequisite to filing an  
20 action in circuit court. See Rule 12D-9.019(7)(d), F.A.C.  
21

22 More information on rescheduling hearings is contained in the following section titled  
23 "Procedures for the Exchange of Evidence."  
24  
25

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

26 Section 194.011(4)(a), F.S., and Rule 12D-9.020(1)(a)1., F.A.C., provide that, at least  
27 fifteen (15) days before a petition hearing, the petitioner shall provide to the property  
28 appraiser a list of evidence to be presented at the hearing, a summary of evidence to be  
29 presented by witnesses, and copies of all documentation to be presented at the hearing.  
30  
31

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

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1  
2 \* Article I, Section 18, of the Florida Constitution, prohibits the imposition of any  
3 penalty except as provided by law.

4  
5 \* A petitioner's noncompliance with section 194.011(4)(a), F.S., does not affect the  
6 petitioner's right to receive a copy of the current property record card from the  
7 property appraiser as described in section 194.032(2)(a), F.S. See Rule 12D-  
8 9.020(1)(b), F.A.C.

9  
10 \* A petitioner's noncompliance with Rule 12D-9.020(1)(a), F.A.C., does not authorize  
11 a Board or special magistrate to exclude the petitioner's evidence. See Rule 12D-  
12 9.020(1)(c), F.A.C.

13  
14 Thus, if a petitioner does not comply with section 194.011(4)(a), F.S., the petitioner may  
15 still present evidence and the Board or the special magistrate may accept such  
16 evidence for consideration, unless the provisions of 194.034(1)(h), F.S., apply.

17  
18 Under section 194.034(1)(h), F.S., if the property appraiser asks in writing for specific  
19 evidence before the hearing in connection with a filed petition and the petitioner has this  
20 evidence and knowingly refuses to provide it to the property appraiser a reasonable  
21 time before the hearing, the evidence cannot be presented by the petitioner or accepted  
22 for consideration by the Board or special magistrate. See Rule 12D-9.025(1)(c), F.A.C.

23  
24 \* Reasonableness shall be determined by whether the material can be reviewed,  
25 investigated, and responded to or rebutted in the time frame remaining before the  
26 hearing. See Rule 12D-9.020(1)(c), F.A.C.

27  
28 \* These requirements are more specifically described in Rules 12D-9.020(8) and 12D-  
29 9.025(4)(a) and (f), F.A.C.

30  
31 If the property appraiser receives the petitioner's documentation as described in Rule  
32 12D-9.020 (1)(a), F.A.C., and if requested in writing by the petitioner, the property  
33 appraiser shall, no later than seven (7) days before the hearing, provide to the petitioner  
34 a list of evidence to be presented at the hearing, a summary of evidence to be  
35 presented by witnesses, and copies of all documentation to be presented by the  
36 property appraiser at the hearing. See Rule 12D-9.020(2)(a), F.A.C.

37  
38 \* There is no specific form or format required for the petitioner's written request. See  
39 Rule 12D-9.020(2)(a), F.A.C.

40  
41 \* The property appraiser's evidence list must contain the current property record card.  
42 See Rule 12D-9.020(2)(a), F.A.C.

43  
44 \* To calculate the seven (7) days, the property appraiser shall use calendar days and  
45 shall not include the day of the hearing in the calculation, and shall count backwards  
46 from the day of the hearing. The last day of the period so computed shall be

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1 included unless it is a Saturday, Sunday, or legal holiday, in which event the period  
2 shall run until the end of the next previous day which is neither a Saturday, Sunday,  
3 or legal holiday. See Rule 12D-9.020(2)(b), F.A.C.

- 4
- 5 \* The summary of evidence to be presented by witnesses for the property appraiser  
6 shall be sufficiently detailed as to reasonably inform a party of the general subject  
7 matter of the witness' testimony, and the name and address of the witness. See Rule  
8 12D-9.020(5), F.A.C.

9

10 If the petitioner does not provide the information to the property appraiser at least fifteen  
11 (15) days prior to the hearing as described in Rule 12D-9.020(1)(a), F.A.C., the property  
12 appraiser need not provide the information to the petitioner as described in Rule 12D-  
13 9.020(2), F.A.C. See Rule 12D-9.020(3)(a), F.A.C.

14

15 If the property appraiser does not provide the information to the petitioner within the  
16 time required by Rule 12D-9.020(2), F.A.C., the hearing shall be rescheduled to allow  
17 the petitioner additional time to review the property appraiser's evidence. See Rule 12D-  
18 9.020(3)(b), F.A.C.

19

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

- 23
- 24 \* The petitioner and property appraiser may agree to a different timing and method of  
25 exchange. See Rule 12D-9.020(4), F.A.C.

- 26
- 27 \* "Provided" means received by the party not later than the time frame provided in this  
28 rule section. See Rule 12D-9.020(4), F.A.C.

- 29
- 30 \* If either party does not designate a desired manner for receiving information in the  
31 evidence exchange, the information shall be provided by U.S. mail. See Rule 12D-  
32 9.020(4), F.A.C.

- 33
- 34 \* The property appraiser shall provide the information at the address listed on the  
35 petition form for the petitioner. See Rule 12D-9.020(4), F.A.C.

36

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

- 39
- 40 \* The remedy for such noncompliance shall be a rescheduling of the hearing to allow  
41 the petitioner an opportunity to review the information of the property appraiser. See  
42 Rule 12D-9.020(7), F.A.C.

43

44 No petitioner may present for consideration, nor may a Board or special magistrate  
45 accept for consideration, testimony or other evidentiary materials that were specifically  
46 requested of the petitioner in writing by the property appraiser in connection with a filed

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1 petition, of which the petitioner had knowledge and denied to the property appraiser.  
2 See Rule 12D-9.020(8), F.A.C.

3  
4 \* Such evidentiary materials shall be considered timely if provided to the property  
5 appraiser no later than fifteen (15) days before the hearing in accordance with the  
6 exchange of evidence rules in this section. See Rule 12D-9.020(8), F.A.C.

7  
8 \* If provided to the property appraiser less than fifteen (15) days before the hearing,  
9 such materials shall be considered timely if the Board or special magistrate  
10 determines the materials were provided a reasonable time before the hearing, as  
11 described in paragraph 12D-9.025(4)(f), F.A.C. See Rule 12D-9.020(8), F.A.C.

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

16  
17 \* This provision does not preclude rebuttal evidence that was not specifically  
18 requested of the petitioner by the property appraiser. See Rule 12D-9.020(8), F.A.C.

19  
20 As the trier of fact, the Board or special magistrate may independently rule on the  
21 admissibility and use of evidence. See Rule 12D-9.020(9), F.A.C.

22  
23 \* If the Board or special magistrate has any questions relating to the admissibility and  
24 use of evidence, the Board or special magistrate should consult with the Board legal  
25 counsel. See Rule 12D-9.020(9), F.A.C.

26  
27 \* The basis for any ruling on admissibility of evidence must be reflected in the record.  
28 See Rule 12D-9.020(9), F.A.C.

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

29  
30  
31 A petitioner may withdraw a petition prior to the scheduled hearing. See Rule 12D-  
32 9.021(1), F.A.C.

33  
34  
35 Form DR-485WI is prescribed by the Department for such purpose; however, other  
36 written or electronic means may be used. See Rule 12D-9.021(1), F.A.C.

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

40  
41 \* If the Department's form is used, a current and up-to-date version of the form must  
42 be used.

43  
44 Under Rule 12D-9.021(1), F.A.C., Form DR-485WI shall indicate the reason for the  
45 withdrawal as one of the following:

46

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- 1 1. Petitioner agrees with the determination of the property appraiser or tax collector;
- 2
- 3 2. Petitioner and property appraiser or tax collector have reached a settlement of the
- 4 issues;
- 5
- 6 3. Petitioner does not agree with the decision or assessment of the property appraiser
- 7 or tax collector but no longer wishes to pursue a remedy through the value
- 8 adjustment board process; or
- 9
- 10 4. Other specified reason.

11  
12 The Board clerk shall cancel the hearing upon receiving a notice of withdrawal from the  
13 petitioner and there shall be no further proceeding on the matter. See Rule 12D-9.021(2),  
14 F.A.C.

15  
16 If a property appraiser or tax collector agrees with a petition challenging a decision to  
17 deny an exemption, classification, portability assessment difference transfer, or deferral,  
18 the property appraiser or tax collector shall:

- 19
- 20 1. Issue the petitioner a notice granting said exemption, classification, portability
- 21 assessment difference transfer, or deferral; and
- 22
- 23 2. File with the Board clerk a notice that the petition was acknowledged as correct.
- 24
- 25 \* The Board clerk shall cancel the hearing upon receiving the notice of
- 26 acknowledgment and there shall be no further proceeding on the matter
- 27 acknowledged as correct. See Rule 12D-9.021(3), F.A.C.
- 28

29 If parties do not file a notice of withdrawal or notice of acknowledgment but indicate the  
30 same at the hearing, the Board or special magistrate shall so state on the hearing  
31 record and shall not proceed with the hearing and shall not issue a decision. See Rule  
32 12D-9.021(4), F.A.C.

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

38  
39 \* The Board clerk shall list and report all withdrawals, settlements, acknowledgments  
40 of correctness as withdrawn or settled petitions. See Rule 12D-9.021(4), F.A.C.

41  
42 \* Settled petitions shall include those acknowledged as correct by the property  
43 appraiser or tax collector. See Rule 12D-9.021(4), F.A.C.

44

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1 For all withdrawn or settled petitions, a special magistrate shall not produce a  
2 recommended decision and the Board shall not produce a final decision. See Rule 12D-  
3 9.021(5), F.A.C.

### 4 5 6 7 8 **Non-Appearance and Summary Disposition of Petitions**

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

13  
14 \* In such cases, the petitioner is not required to appear at the hearing in the county  
15 where the previous homestead was located. See Rule 12D-9.028(6)(d), F.A.C.

16  
17 \* See Module 10 for information on petitions on assessment difference transfers  
18 (portability).

19  
20 Except for portability hearings as described above, when a petitioner does not appear  
21 by the commencement of a scheduled hearing and the petitioner has not indicated a  
22 desire to have their petition heard without their attendance and a good cause request is  
23 not pending, the Board or the special magistrate shall:

- 24  
25 1. Not commence or proceed with the hearing; and  
26  
27 2. Produce a decision or recommended decision as described below and in Rule 12D-  
28 9.021(8), F.A.C. See Rule 12D-9.021(6), F.A.C.

29  
30 If the petitioner makes a good cause request before the decision or recommended  
31 decision is issued, the Board or Board designee shall rule on the good cause request  
32 before determining that:

- 33  
34 1. The decision or recommended decision should be set aside and the hearing should  
35 be rescheduled; or  
36  
37 2. The Board or special magistrate should issue the decision or recommended  
38 decision. See Rule 12D-9.021(6), F.A.C.

39  
40 When a petitioner does not appear by the commencement of a scheduled hearing but a  
41 good cause request is pending, the Board or Board designee shall rule on the good  
42 cause request before determining that:

- 43  
44 1. The hearing should be rescheduled; or  
45

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1 2. The Board or special magistrate should issue a decision or recommended decision.  
2 See Rule 12D-9.021(7), F.A.C.

3  
4 \* If the Board or Board designee finds good cause for the petitioner's failure to appear,  
5 the Board clerk shall reschedule the hearing. See Rule 12D-9.021(7)(a), F.A.C.

6  
7 \* If the Board or Board designee does not find good cause for the petitioner's failure to  
8 appear, the Board or special magistrate shall issue a decision or recommended  
9 decision. See Rule 12D-9.021(7)(b), F.A.C.

10  
11 Decisions issued under Rule Subsections 12D-9.021(6) or (7), F.A.C., shall not be  
12 treated as withdrawn or settled petitions and shall contain:

13  
14 1. A finding of fact that the petitioner did not appear at the hearing and did not state  
15 good cause; and

16  
17 2. A conclusion of law that the relief is denied and the decision is being issued in order  
18 that any right the petitioner may have to bring an action in circuit court is not  
19 impaired. See Rule 12D-9.021(8), F.A.C.

### 20 21 22 **Legislation Affecting Certain Board Petitions**

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

24  
25 \* Pay non-ad valorem assessments and a specified amount of the taxes before the  
26 later of April 1 or the delinquency date of the year after the taxes were assessed;  
27 and

28  
29 \* Pay a penalty if the good faith payment is grossly disproportionate to the amount of  
30 tax found to be due and the taxpayer's admission was not made in good faith.

31  
32 See sections 194.014, 197.162, and 197.333, F.S.

33  
34 Also, this legislation requires the value adjustment board to deny the petition in writing  
35 by a certain date if the required amount of taxes is not timely paid.

36  
37 Chapter 2016-128, Section 9, Laws of Florida, effective July 1, 2016, changes the  
38 interest rate for disputed property tax assessments from 12 percent per year to an  
39 annual percentage rate equal to the bank prime loan rate as the Board of Governors of  
40 the Federal Reserve System determines on July 1 of the tax year or the next business  
41 day if July 1 is a Saturday, Sunday, or legal holiday. Also, each taxing authority will  
42 proportionately fund interest on an overpayment related to a petition. See Section  
43 194.014(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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1        2. Notify the Board or special magistrate before or at the hearing that the petitioner  
2        has indicated he or she will not appear at the hearing, but would like for the  
3        Board or special magistrate to consider his or her evidence at the hearing; and  
4

5        3. Give the evidence to the Board or special magistrate at the beginning of the  
6        hearing. See Rule 12D-9.024(9)(b), F.A.C.  
7

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

13 \* Then, the Board or special magistrate shall request the petitioner to state for the  
14 record whether he or she wants to have the hearing rescheduled or wants to  
15 proceed with the hearing without the property appraiser or tax collector. See Rule  
16 12D-9.024(10), F.A.C.  
17

18 \* If the petitioner elects to have the hearing rescheduled, the Board clerk shall  
19 reschedule the hearing. See Rule 12D-9.024(10), F.A.C.  
20

21 \* If the petitioner elects to proceed with the hearing without the property appraiser or  
22 tax collector, the Board or special magistrate shall proceed with the hearing and  
23 shall produce a decision or recommended decision. See Rule 12D-9.024(10), F.A.C.  
24

25 In any hearing conducted without one of the parties present, the Board or special  
26 magistrate must take into consideration the inability of the opposing party to cross-  
27 examine the non-appearing party in determining the sufficiency of the evidence of the  
28 non-appearing party. See Rule 12D-9.024(11), F.A.C.  
29  
30

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

31 Boards and special magistrates shall adhere as closely as possible to the schedule of  
32 hearings established by the Board clerk but must ensure that adequate time is allowed  
33 for parties to present evidence and for the Board or special magistrate to consider the  
34 admitted evidence. See Rule 12D-9.023(2), F.A.C.  
35  
36

37 \* If the Board or special magistrate determines from the petition form that the hearing  
38 has been scheduled for less time than the petitioner requested on the petition, the  
39 Board or special magistrate must consider whether the hearing should be extended  
40 or continued to provide additional time. See Rule 12D-9.023(2), F.A.C.  
41

42 Unless a Board or special magistrate determines that additional time is necessary, the  
43 Board or special magistrate shall conclude all hearings at the end of the time scheduled  
44 for the hearing. See Rule 12D-9.025(8), F.A.C.  
45

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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Procedures for Presentation of Evidence by the Parties**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46

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

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

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

17

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

21

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

25

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

29

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

35

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

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

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

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

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

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

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

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

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

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

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

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

3

### Rebuttal Evidence: Example 2

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

6

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

9

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

14

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

18

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

22

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

25

### Rebuttal Evidence: Example 3

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

28

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

31

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

34

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

38

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

42

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

45

46

1 **Admissibility of Evidence**

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2022+ Value Adjustment Board Training - Module 4

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

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

8  
9 Bulletin: PTO 10-07

10 [https://floridarevenue.com/TaxLaw/Documents/OTH-120190\\_PTO\\_BUL\\_10-07\\_VAB\\_Hearings\\_and\\_Confidentiality.pdf](https://floridarevenue.com/TaxLaw/Documents/OTH-120190_PTO_BUL_10-07_VAB_Hearings_and_Confidentiality.pdf)

### 11 12 13 **The Higgs v. Good Case and Admissibility of Taxpayer Evidence**

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

17  
18 \* The Higgs court disallowed the consideration of a taxpayer's property income data in  
19 a circuit court lawsuit because the taxpayer did not provide the data when requested  
20 by the property appraiser in the appraisal development process under section  
21 195.027(3), F.S., and Rule 12D-1.005, F.A.C.

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

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

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

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

37  
38 No statute authorizes the imposition of a penalty (exclusion of taxpayer evidence) in a  
39 value adjustment board proceeding in a case where a property taxpayer does not  
40 provide the financial records of non-homestead property that is referenced in section  
41 195.027(3), F.S.

42

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

3  
4 **“Administrative penalties.—** No administrative agency, except the  
5 Department of Military Affairs in an appropriately convened court-martial action  
6 as provided by law, shall impose a sentence of imprisonment, nor shall it  
7 impose any other penalty except as provided by law.” [underlined emphasis  
8 added]  
9

10 \* Therefore, the Department’s rules for Board proceedings cannot create a penalty  
11 (exclusion of taxpayer evidence) that is not specifically authorized by statute.

12  
13 \* Likewise, a Board or special magistrate cannot impose a penalty that is not  
14 specifically authorized by statute.

15  
16 \* There is no statute or rule authorizing a Board or special magistrate to order the  
17 exclusion, based on the Higgs decision, of relevant and otherwise admissible  
18 evidence.

19  
20 The Department’s rules in Chapter 12D-9, F.A.C., are part of the implementation of  
21 2008 legislation from Chapter 2008-197, Laws of Florida, which directs the Department  
22 to develop a uniform policies and procedures manual for use by Boards.

23  
24 \* Since there is no legislative authority to implement the Higgs case in rules on  
25 administrative review, Chapter 12D-9, F.A.C., does not incorporate the Higgs case.

26  
27 If a taxpayer complies with section 194.034(1)(h), F.S., otherwise admissible property  
28 income data not provided by the taxpayer when requested during the appraisal  
29 development process may still be accepted for consideration in a Board petition.

30  
31 There are two statutory provisions by which a property appraiser can request relevant  
32 assessment information from a property taxpayer, as described following.

33  
34 1. The first of these provisions is found in section 195.027(3), F.S., which provides that  
35 the property appraiser can request financial records reasonably necessary to the  
36 classification or valuation of non-homestead property.

37  
38 \* The rule implementing this statute is 12D-1.005, F.A.C.

39  
40 \* This first provision applies to the process of developing property appraisals and  
41 does not refer or apply to the administrative review of those appraisals.

42  
43 \* Section 195.027(3), F.S., contains no penalty for a case where a property  
44 taxpayer does not provide such financial records when requested by the property  
45 appraiser in the appraisal development process.  
46

## 2022+ Value Adjustment Board Training - Module 4

1 \* The Higgs case specifically involved a request for taxpayer records under section  
2 195.027(3), F.S.

3  
4 2. The second of these statutory provisions is found in section 194.034(1)(h), F.S.,  
5 which provides that no petitioner may present, nor may a board or special magistrate  
6 accept for consideration, testimony or other evidentiary materials that were  
7 specifically requested of the petitioner in writing by the property appraiser in  
8 connection with a filed petition, of which the petitioner had knowledge and denied to  
9 the property appraiser.

10  
11 \* This second provision applies to the administrative review of assessments.

12  
13 \* Section 194.034(1)(h), F.S., does provide a penalty (exclusion of evidence) for a  
14 case where a property taxpayer does not provide the appropriate evidence when  
15 requested in writing by the property appraiser in connection with a filed Board  
16 petition.

17  
18 \* The Higgs case did not involve the process provided in section 194.034(1)(h),  
19 F.S.

20  
21 Since there is a separate statutory process for requesting and exchanging evidence in  
22 connection with a filed Board petition, until an appellate court or the Legislature  
23 expressly applies the Higgs decision in the context of the Board's statutory process, the  
24 Higgs decision does not apply in Board proceedings.

25  
26 In the Higgs decision, since the court was not reviewing an administrative proceeding,  
27 the court's references to administrative review are not part of the holding in the case.

28  
29 \* The references apparently originated from the form used by the property appraiser  
30 to request necessary financial records from property owners.

31  
32 \* The Higgs decision's gratuitous reference to "administrative" is *obiter dictum*. See  
33 Doherty v. Brown, 14 So. 3d 1266, 1267 (Fla. 1st DCA 2009), stating: "[A] purely gratuitous  
34 observation or remark made in pronouncing an opinion and which concerns some rule,  
35 principle, or application of law not necessarily involved in the case or essential to its  
36 determination is *obiter dictum*, pure and simple."

37  
38 \* The case of Higgs v. Good does not apply to Board proceedings (administrative  
39 reviews).

40  
41

## 2022+ Value Adjustment Board Training - Module 4

### 1 **Standard of Proof**

2 In administrative reviews, Boards or special magistrates must consider admitted  
3 evidence and then compare the weight of the evidence to a “standard of proof” to make  
4 a determination on an issue under review.

5 “Standard of proof” means the level of proof needed by the Board or special magistrate  
6 to reach a particular conclusion. See Rule 12D-9.027(5), F.A.C.

7  
8 Under section 194.301, F.S., “preponderance of the evidence” is the standard of proof  
9 that applies in assessment challenges. See Rule 12D-9.025(3)(b), F.A.C.

10

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

13

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

17

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

20

21

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

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

25

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

28

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

31

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

35

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

39

40

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

42 By agreement of the parties entered in the record, the Board or special magistrate may  
43 leave the record open and postpone completion of the hearing to a date certain to allow  
44 a party to collect and provide additional relevant and credible evidence. See Rule 12D-  
45 9.025(6)(a), F.A.C.

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1  
2 \* Such postponements shall be limited to instances where, after completing original  
3 presentations of evidence, the parties agree to the collection and submittal of  
4 additional, specific factual evidence for consideration by the Board or special  
5 magistrate. See Rule 12D-9.025(6)(a), F.A.C.  
6

7 \* In lieu of completing the hearing, upon agreement of the parties the Board or special  
8 magistrate is authorized to consider such evidence without further hearing. See Rule  
9 12D-9.025(6)(a), F.A.C.  
10

11 If additional hearing time is necessary, the hearing must be completed at the date,  
12 place, and time agreed upon for presenting the additional evidence to the Board or  
13 special magistrate for consideration. See Rule 12D-9.025(6)(b), F.A.C.  
14

15 Rule 12D-9.025(6)(c), F.A.C., provides that the following limitations shall apply if the  
16 property appraiser seeks to present additional evidence that was unexpectedly  
17 discovered and that would increase the assessment.  
18

- 19 1. The Board or special magistrate shall ensure that such additional evidence is limited  
20 to a correction of a factual error discovered in the physical attributes of the petitioned  
21 property; a change in the property appraiser's judgment is not such a correction and  
22 shall not justify an increase in the assessment.  
23
- 24 2. A notice of revised proposed assessment shall be made and provided to the  
25 petitioner in accordance with the notice provisions set out in Florida Statutes for  
26 notices of proposed property taxes.  
27
- 28 3. Along with the notice of revised proposed assessment, the property appraiser shall  
29 provide to the petitioner a copy of the revised property record card containing  
30 information relevant to the computation of the revised proposed assessment, with  
31 confidential information redacted. The property appraiser shall provide such revised  
32 property record card to the petitioner either by sending it to the petitioner or by  
33 notifying the petitioner how to obtain it online.  
34
- 35 4. A new hearing shall be scheduled and notice of the hearing shall be sent to the  
36 petitioner.  
37
- 38 5. The evidence exchange procedures in Rule 12D-9.020, F.A.C., shall be available.  
39
- 40 6. The back assessment procedure in section 193.092, F.S., shall be used for any  
41 assessment already certified.  
42  
43

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

44 Hearings conducted by electronic media shall occur only under the conditions set forth  
45 in Rule 12D-9.026, F.A.C.  
46

## 2022+ Value Adjustment Board Training - Module 4

1  
2 \* Hearings conducted by electronic media are subject to Board approval and the  
3 availability of the necessary equipment and procedures. See Rule 12D-9.026(1)(a),  
4 F.A.C.

5  
6 \* The special magistrate, if one is used, must agree in each case to the electronic  
7 hearing. See Rule 12D-9.026(1)(b), F.A.C.

8  
9 \* The Board must reasonably accommodate parties that have hardship or lack  
10 necessary equipment or ability to access equipment. See Rule 12D-9.026(1)(c), F.A.C.

11  
12 \* The Board must provide a physical location at which a party may appear, if  
13 requested. See Rule 12D-9.026(1)(c), F.A.C.

14  
15 For any hearing conducted by electronic media, the Board shall ensure that all  
16 equipment is adequate and functional for allowing clear communication among the  
17 participants and for creating the hearing records required by law.

18  
19 \* The Board procedures shall specify the time period within which a party must  
20 request to appear at a hearing by electronic media. See Rule 12D-9.026(2), F.A.C.

21  
22 Consistent with Board equipment and procedures:

23  
24 \* Any party may request to appear at a hearing before a Board or special magistrate,  
25 using telephonic or other electronic media. See Rule 12D-9.026(3)(a), F.A.C.

26  
27 \* However, unless required by other provisions of state or federal law, the Board  
28 clerk need not comply with such a request if such telephonic or electronic media  
29 are not reasonably available. See Rule 12D-9.026(3)(a), F.A.C.

30  
31 \* If the Board or special magistrate allows a party to appear by telephone, all  
32 members of the Board in the hearing or the special magistrate must be physically  
33 present in the hearing room. See Rule 12D-9.026(3)(a), F.A.C.

34  
35 \* The parties must also all agree on the methods for swearing witnesses, presenting  
36 evidence, and placing testimony on the record. Such methods must comply with the  
37 provisions of this rule chapter. See Rule 12D-9.026(3)(b), F.A.C.

38  
39 \* The agreement of the parties must include which parties must appear by telephonic  
40 or other electronic media and which parties will be present in the hearing room. See  
41 Rule 12D-9.026(3)(b), F.A.C.

42  
43 Hearings conducted by electronic media must be open to the public either by providing  
44 the ability for interested members of the public to join the hearing electronically or to  
45 monitor the hearing at the location of the Board or special magistrate. See Rule 12D-  
46 9.026(4), F.A.C.

1  
2  
3 **Module 5:**  
4 **Procedures After the Hearing**  
5

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

- 7 • Procedures for Remanding Value Assessments to the Property Appraiser  
8 • Procedures for Recommended Decisions by Special Magistrates  
9 • Procedures for Consideration and Adoption of Recommended Decisions by Boards  
10 • Procedures for Final Decisions by Boards  
11 • Further Judicial Proceedings  
12 • Requirements for the Record of the Hearing  
13 • Requirements for Certification of Assessment Rolls  
14 • Requirements for Public Notice of Findings and Results of the Board  
15

16  
17 **Learning Objectives**

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

- 19  
20 • Identify and apply the procedures for remanding value assessments  
21 • Recognize the procedures and requirements for recommended decisions  
22 • Identify and apply the procedures for consideration and adoption of recommended  
23 decisions  
24 • Recognize the procedures and requirements for final decisions  
25 • Identify and apply the requirements for the record of the hearing  
26 • Recognize the requirements and procedures for certification of assessment rolls  
27 • Identify the requirements for public notice of findings and results of the Board  
28  
29

30 **Procedures for Remanding Value Assessments to the Property**  
31 **Appraiser**

32 In this training, the term “remand” means to send the assessment back to the property  
33 appraiser with appropriate directions for establishing the value of the petitioned  
34 property.  
35

36 Rules 12D-9.029(1) and 12D-9.027(2) and (3), F.A.C., require the Board or appraiser  
37 special magistrate to remand a value assessment to the property appraiser when the  
38 Board or special magistrate has concluded that:  
39

- 40 1. The property appraiser did not establish a presumption of correctness, or has  
41 concluded that the property appraiser established a presumption of correctness that  
42 is overcome, as provided in Rule 12D-9.027, F.A.C.; and  
43

## 2022+ Value Adjustment Board Training - Module 5

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

4  
5 An attorney special magistrate shall remand an assessment to the property appraiser  
6 for a classified use valuation when the special magistrate has concluded that a property  
7 classification will be granted. See Rule 12D-9.029(2), F.A.C.

8  
9 In a petition heard by the Board, Rule 12D-9.029(3), F.A.C., requires the Board to  
10 remand an assessment to the property appraiser for a classified use valuation when the  
11 Board:

- 12  
13 1. Has concluded that a property classification will be granted; and  
14  
15 2. Has concluded that the record does not contain the competent substantial evidence  
16 necessary for the Board to establish classified use value.

17  
18 For remanding an assessment to the property appraiser, the Board or special  
19 magistrate shall produce a written remand decision that shall include appropriate  
20 directions to the property appraiser. See Rule 12D-9.029(6), F.A.C.

21  
22 Rule 12D-9.029(4), F.A.C., provides that the Board or special magistrate shall produce  
23 written findings of fact and conclusions of law necessary to determine that a remand is  
24 required, but shall not render a recommended or final decision until after a continuation  
25 hearing is held or waived as provided in Rule 12D-9.029(9), F.A.C.

26  
27 \* For producing these findings and conclusions and remanding an assessment, the  
28 Board or special magistrate is required to use Form DR-485R. See Rule 12D-  
29 9.029(4), F.A.C.

30  
31 \* The Form DR-485R is available on the Department's website at the following link:  
32 <http://floridarevenue.com/property/Pages/Forms.aspx>

33  
34 \* Boards and special magistrates are required to use current and up-to-date forms.

35  
36 When an attorney special magistrate remands an assessment to the property appraiser  
37 for classified use valuation, an appraiser special magistrate retains authority to produce  
38 a recommended decision in accordance with law. See Rule 12D-9.029(5), F.A.C.

39  
40 When an appraiser special magistrate remands an assessment to the property  
41 appraiser, the special magistrate retains authority to produce a recommended decision  
42 in accordance with law. See Rule 12D-9.029(5), F.A.C.

43  
44 When the Board remands an assessment to the property appraiser, the Board retains  
45 authority to make a final decision on the petition in accordance with law. See Rule 12D-  
46 9.029(5), F.A.C.

## 2022+ Value Adjustment Board Training - Module 5

1  
2 The Board clerk shall concurrently provide, to the petitioner and the property appraiser,  
3 a copy of the written remand decision from the Board or special magistrate. See Rule  
4 12D-9.029(7), F.A.C.

5  
6 \* The petitioner's copy of the written remand decision shall be sent by regular or  
7 certified U.S. mail, or by personal delivery, or in the manner requested by the  
8 taxpayer on the petition. See Rule 12D-9.029(7), F.A.C.

9  
10 After receiving a Board or special magistrate's remand decision from the Board clerk,  
11 the property appraiser shall follow the appropriate directions from the Board or special  
12 magistrate and shall produce a written remand review. See Rule 12D-9.029(8)(a), F.A.C.

13  
14 \* The property appraiser or his or her staff shall not have, directly or indirectly, any ex  
15 parte communication with the Board or special magistrate regarding the remanded  
16 assessment. See Rule 12D-9.029(8)(b), F.A.C.

17  
18 Immediately after receipt of the written remand review from the property appraiser, the  
19 Board clerk shall send a copy of the written remand review to the petitioner by regular or  
20 certified U.S. mail or by personal delivery, or in the manner requested by the petitioner  
21 on the petition, and shall send a copy to the Board or special magistrate. See Rule 12D-  
22 9.029(9)(a), F.A.C.

23  
24 \* The Board clerk shall retain, as part of the petition file, the property appraiser's  
25 written remand review. See Rule 12D-9.029(9)(a), F.A.C.

26  
27 \* Together with the petitioner's copy of the written remand review, the Board clerk  
28 shall send to the petitioner a copy of Rule 12D-9.029(9), F.A.C. See Rule 12D-  
29 9.029(9)(a), F.A.C.

30  
31 The Board clerk shall schedule a continuation hearing if the petitioner notifies the Board  
32 clerk, within 25 days of the date the Board clerk sends the written remand review, that  
33 the results of the property appraiser's written remand review are unacceptable to the  
34 petitioner and that the petitioner requests a further hearing on the petition. See Rule  
35 12D-9.029(9)(b), F.A.C.

36  
37 \* The Board clerk shall send the notice of hearing so that it will be received by the  
38 petitioner no less than twenty-five (25) calendar days prior to the day of the  
39 scheduled continuation hearing, as described in Rule 12D-9.019(3), F.A.C. See Rule  
40 12D-9.029(9)(b), F.A.C.

41  
42 When a petitioner does not notify the Board clerk that the results of the property  
43 appraiser's written remand review are unacceptable to the petitioner and does not  
44 request a continuation hearing, or if the petitioner waives a continuation hearing, the  
45 Board or special magistrate shall issue a decision or recommended decision. See Rule  
46 12D-9.029(9)(b), F.A.C.

## 2022+ Value Adjustment Board Training - Module 5

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45

\* 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

## 2022+ Value Adjustment Board Training - Module 5

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

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

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

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

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

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

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

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

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

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

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

## 2022+ Value Adjustment Board Training - Module 5

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

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

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

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

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

22  
23  
24 All recommended decisions shall comply with Sections 194.301, 194.034(2), and  
25 194.035(1), F.S. See Rule 12D-9.031(1), F.A.C.

- 26  
27  
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.

## 2022+ Value Adjustment Board Training - Module 5

1  
2 \* Adoption of recommended decisions need not include a review of the underlying  
3 record. See Rule 12D-9.031(2), F.A.C.  
4

5 If the Board determines that a recommended decision meets the requirements of law,  
6 the Board shall adopt the recommended decision. See Rule 12D-9.031(3), F.A.C.  
7

8 \* When a recommended decision is adopted and rendered by the Board, it becomes  
9 final. See Rule 12D-9.031(3), F.A.C.  
10

11 Under Rule 12D-9.031(4), F.A.C., if the Board determines that a recommended decision  
12 does not comply with the requirements of law, the Board shall proceed as follows.  
13

- 14 1. The Board shall request the advice of Board legal counsel to evaluate further action  
15 and shall take the steps necessary for producing a final decision in compliance with  
16 law.  
17
- 18 2. The Board may direct a special magistrate to produce a recommended decision that  
19 complies with the law based on, if necessary, a review of the entire record.  
20
- 21 3. The Board shall retain any recommended decisions and all other records of actions  
22 taken under Rule 12D-9.031, F.A.C.  
23  
24

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

25 For each petition not withdrawn or settled, the Board shall produce a written final  
26 decision that contains findings of fact, conclusions of law, and reasons for upholding or  
27 overturning the property appraiser's determination. See Rule 12D-9.032(1)(a), F.A.C.  
28  
29

30 \* The Board may fulfill the requirement to produce a written final decision by adopting  
31 a recommended decision of the special magistrate containing the required elements  
32 and providing notice that it has done so. See Rule 12D-9.032(1)(a), F.A.C.  
33

34 \* The Board may adopt the special magistrate's recommended decision as the  
35 decision of the Board by incorporating the recommended decision, using a postcard  
36 or similar notice. See Rule 12D-9.032(1)(a), F.A.C.  
37

38 \* The Board shall ensure regular and timely approval of recommended decisions. See  
39 Rule 12D-9.032(1)(a), F.A.C.  
40

41 Legal advice from the Board legal counsel relating to the facts of a petition or to the  
42 specific outcome of a decision, if in writing, shall be included in the record and  
43 referenced within the findings of fact and conclusions of law. See Rule 12D-9.032(1)(b),  
44 F.A.C.  
45

## 2024 Value Adjustment Board Training - Module 5

- 1 \* If not in writing, such advice shall be documented within the findings of fact and  
2 conclusions of law. See Rule 12D-9.032(1)(b), F.A.C.  
3
- 4 A final decision of the Board shall state the just, assessed, taxable, and exempt value,  
5 for the county both before and after Board action. See Rule 12D-9.032(2), F.A.C.  
6
- 7 \* Board action shall not include changes made as a result of action by the property  
8 appraiser. See Rule 12D-9.032(2), F.A.C.  
9
- 10 \* If the property appraiser has reduced his or her value or granted an exemption,  
11 property classification, or “portability” assessment difference transfer, whether before  
12 or during the hearing but before Board action, the values in the “before” column shall  
13 reflect the adjusted figure before Board action. See Rule 12D-9.032(2), F.A.C.  
14
- 15 The Board’s final decision shall advise the taxpayer and property appraiser that further  
16 proceedings in circuit court shall be as provided in Section 194.036, F.S. See Rule 12D-  
17 9.032(3), F.A.C.  
18
- 19 Upon issuance of a final decision by the Board, the Board shall provide it to the Board  
20 clerk and the Board clerk shall promptly provide notice of the final decision to the  
21 parties. See Rule 12D-9.032(4), F.A.C.  
22
- 23 \* Notice of the final decision may be made by providing a copy of the decision. See  
24 Rule 12D-9.032(4), F.A.C.  
25
- 26 \* The Board shall issue all final decisions within 20 calendar days of the last day the  
27 Board is in session pursuant to Section 194.034, F.S. See Rule 12D-9.032(4), F.A.C.  
28
- 29 \* Notification of the petitioner must be by first class mail or by electronic means as set  
30 forth in section 194.034(2) or section 192.048, F.S. See Rule 12D-9.007(10), F.A.C.  
31
- 32 For the purpose of producing the final decisions of the Board, the Department  
33 prescribes the Form DR-485 series, and any electronic equivalent forms approved by  
34 the Department under Section 195.022, F.S. See Rule 12D-9.032(5), F.A.C.  
35
- 36 \* The Form DR-485 series is available on the Department’s website at the following  
37 link: <http://floridarevenue.com/property/Pages/Forms.aspx>  
38
- 39 \* Boards and special magistrates are required to use current and up-to-date forms.  
40
- 41 \* The Form DR-485 series, or approved electronic equivalent forms, are the only  
42 forms that shall be used for producing a final decision of the Board. See Rule 12D-  
43 9.032(5), F.A.C.  
44

## 2022+ Value Adjustment Board Training - Module 5

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

1 **Further Judicial Proceedings**

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

5  
6  
7 **Requirements for the Record of the Hearing**

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

9  
10 *“The board clerk shall maintain a record of the proceeding. The record shall consist of:*

- 11  
12 1. *The petition;*  
13  
14 2. *All filed documents, including all tangible exhibits and documentary evidence*  
15 *presented, whether or not admitted into evidence; and*  
16  
17 3. *Meeting minutes and a verbatim record of the hearing.”*

18  
19 The verbatim record of the hearing may be kept by any electronic means that is easily  
20 retrieved and copied. See Rule 12D-9.034(2), F.A.C.

21  
22 In counties that use special magistrates, the special magistrate shall accurately and  
23 completely preserve the verbatim record during the hearing, and may be assisted by the  
24 Board clerk. See Rule 12D-9.034(2), F.A.C.

25  
26 In counties that do not use special magistrates, the Board clerk shall accurately and  
27 completely preserve the verbatim record during the hearing. See Rule 12D-9.034(2),  
28 F.A.C.

29  
30 At the conclusion of each hearing, the Board clerk shall retain the verbatim record as  
31 part of the petition file. See Rule 12D-9.034(2), F.A.C.

32  
33 Under Rule 12D-9.034(3) and (4), F.A.C., the Board clerk shall maintain the petition  
34 record as follows:

- 35  
36 1. For four years after the Board rendered the final decision, if no appeal is filed in  
37 circuit court; or  
38  
39 2. For five years if an appeal is filed in circuit court; or  
40  
41 3. If requested by one of the parties, these records shall be retained until the final  
42 disposition of any subsequent judicial proceeding related to the same property.  
43

**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;

## 2022+ Value Adjustment Board Training - Module 5

- 1 7. All petitions were reviewed and considered as required by law unless withdrawn or  
2 settled as defined in Rule Chapter 12D-9, F.A.C.;
- 3
- 4 8. All decisions contain required findings of fact and conclusions of law in compliance  
5 with Chapter 194, F.S., and Rule Chapter 12D-9, F.A.C.;
- 6
- 7 9. The Board allowed opportunity for public comment at the meeting at which special  
8 magistrate recommended decisions were considered and adopted;
- 9
- 10 10. All Board members and the Board's legal counsel have read this certification and a  
11 copy of the statement in Rule 12D-9.037(1), F.A.C., is attached; and
- 12
- 13 11. All complaints of noncompliance with Part I, Chapter 194, F.S., or Rule Chapter  
14 12D-9, F.A.C., that were called to the Board's attention have been appropriately  
15 addressed to conform with the provisions of Part I, Chapter 194, F.S., and Rule  
16 Chapter 12D-9, F.A.C.
- 17

18 The Board shall provide a signed original of the certification required under Rule 12D-  
19 9.037, F.A.C., to the Department before publication of the notice of the findings and  
20 results of the Board required by Section 194.037, F.S. See Rule 12D-9.037(3), F.A.C.

- 21
- 22 \* See Form DR-529, Notice Tax Impact of Value Adjustment Board.
- 23
- 24 \* This form is available on the Department's website at the following link:  
25 <http://floridarevenue.com/property/Pages/Forms.aspx>
- 26
- 27 \* Boards are required to use current and up-to-date forms.
- 28
- 29

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

31 After all hearings have been completed, the Board clerk shall publish a public notice  
32 advising all taxpayers of the findings and results of the Board decisions, which shall  
33 include changes made by the Board to the property appraiser's initial roll. See Rule 12D-  
34 9.038(1), F.A.C.

- 35
- 36 \* The format of the tax impact notice shall be substantially as prescribed in Form DR-  
37 529, Notice Tax Impact of Value Adjustment Board. See Rule 12D-9.038(1), F.A.C.
- 38
- 39 \* The public notice shall be in the form of a newspaper advertisement and shall be  
40 referred to as the "tax impact notice." See Rule 12D-9.038(1), F.A.C.
- 41
- 42 \* Such notice shall be published to permit filing within the timeframe in Rules 12D-  
43 17.004(1) and (2), F.A.C., where provided. See Rule 12D-9.038(1), F.A.C.
- 44
- 45 \* For petitioned parcels, the property appraiser's initial roll shall be the property  
46 appraiser's determinations as presented at the commencement of the hearing or as

## 2022+ Value Adjustment Board Training - Module 5

- 1 reduced by the property appraiser during the hearing but before a decision by the  
2 Board or a recommended decision by a special magistrate. See Rule 12D-9.038(1),  
3 F.A.C.  
4
- 5 \* Rule 12D-9.038, F.A.C., shall not prevent the property appraiser from providing data  
6 to assist the Board clerk with the notice of tax impact.  
7
- 8 The notice of the findings and results of the Board shall be published in a newspaper of  
9 paid general circulation within the county. See Rule 12D-9.038(3), F.A.C.  
10
- 11 \* It shall be the specific intent of the publication of notice to reach the largest segment  
12 of the total county population. See Rule 12D-9.038(3), F.A.C.  
13
- 14 \* Any newspaper of less than general circulation in the county shall not be considered  
15 for publication except to supplement notices published in a paper of general  
16 circulation. See Rule 12D-9.038(3), F.A.C.

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## Module 6: Administrative Reviews of Real Property Just Valuations

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

- Statutory Law Beginning in 2009 (See HB 521)
- Standard of Proof for Administrative Reviews
- Scope of Authority for Administrative Reviews
- Legal Limitations on Administrative Reviews
- The Florida Real Property Appraisal Guidelines
- Florida Information on Appraisal Development
- The Eight Factors of Just Valuation in Section 193.011, F.S.
- The Seven Overarching Standards for Valid Just Valuations
- Petitioner Not Required to Present Opinion or Estimate of Value
- Presentation of Evidence by the Parties
- Evaluation of Evidence by the Board or Special Magistrate
- Sufficiency of Evidence
- Requirements for Establishing a Presumption of Correctness
- Requirements for Overcoming a Presumption of Correctness
- Establishing a Revised Just Value or Remanding the Assessment
- Competent Substantial Evidence for Establishing a Revised Just Value
- Establishment of Revised Just Values in Administrative Reviews
- Sequence of General Procedural Steps
- Cost of Sale Deductions Are a Professionally Accepted Appraisal Practice
- Just Valuation Reporting on Cost of Sale Deductions
- Uniformity is Paramount in Cost of Sale Deductions in VAB Petitions
- Destruction Caused by Sudden and Unforeseen Collapse and Abatements of Taxes Due to Catastrophic Events
- ~~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~~

**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

## 2022+ Value Adjustment Board Training - Module 6

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

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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 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*

## 2022+ Value Adjustment Board Training - Module 6

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

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

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

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

### 20 21 Section 2.

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

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

### 31 32 Section 3.

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

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

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

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

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

41

## 2022+ Value Adjustment Board Training - Module 6

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

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

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

16 The law now provides a lower standard of proof, called “preponderance of the  
17 evidence,” for determining whether the assessment is incorrect.  
18

19 \* “Preponderance of the evidence” is a standard (level) of proof that means “greater  
20 weight of the evidence” or “more likely than not.”  
21

22 In determining whether the assessment is incorrect, Boards and special magistrates  
23 must not use any standard of proof other than the preponderance of the evidence  
24 standard, as provided in Section 194.301, F.S., as amended by Chapter 2009-121,  
25 Laws of Florida (House Bill 521).  
26

27 Higher standards of proof no longer apply. The higher standard of proof called “clear  
28 and convincing evidence” no longer applies in the administrative review of assessments  
29 and must not be used by Boards or special magistrates. See Section 194.301, F.S., as  
30 amended by Chapter 2009-121, Laws of Florida (House Bill 521).  
31

32 *“It is the express intent of the Legislature that a taxpayer shall never have the burden of*  
33 *proving that the property appraiser’s assessment is not supported by any reasonable*  
34 *hypothesis of a legal assessment.”* See Subsection 194.3015(1), F.S., as created by Chapter  
35 2009-121, Laws of Florida (House Bill 521).  
36

### 37 38 **Standard of Proof for Administrative Reviews**

39 In administrative reviews, Boards or special magistrates must consider admitted  
40 evidence and then compare the weight of the evidence to a “standard of proof” to make  
41 a determination on an issue under review.  
42

## 2022+ Value Adjustment Board Training - Module 6

1 Generally, the term “evidence” means something (including testimony, documents, and  
2 tangible objects) that tends to prove or disprove the existence of a disputed fact. See  
3 *Black’s Law Dictionary, Eighth Edition*, page 595.

4  
5 “Standard of proof” means the level of proof needed by the Board or special magistrate  
6 to reach a particular conclusion. See Rule 12D-9.027(5), F.A.C.

7  
8 The standard of proof that applies in administrative reviews is called “preponderance of  
9 the evidence,” which means “greater weight of the evidence.” See Rule 12D-9.027(5),  
10 F.A.C.

11  
12 Also, the Florida Supreme Court has defined “preponderance of the evidence” as  
13 “greater weight of the evidence” or evidence that “more likely than not” tends to prove a  
14 certain proposition. See *Gross v. Lyons*, 763 So.2d 276 (Fla. 2000).

15  
16 “Greater weight of the evidence” means the more persuasive and convincing force and  
17 effect of the entire evidence in the case. See Florida Standard Civil Jury Instructions,  
18 approved for publication by the Florida Supreme Court.

19  
20 The Board or special magistrate must determine whether the admitted evidence is  
21 sufficiently relevant and credible to reach the “preponderance of the evidence” standard  
22 of proof.

23  
24 This standard of proof is the scale by which the Board or special magistrate measures  
25 the weight (relevance and credibility) of the admitted evidence in making a  
26 determination.

### 27 28 29 **Scope of Authority for Administrative Reviews**

30 The administrative review of just valuations is performed by Boards or special  
31 magistrates under Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10, and  
32 12D-16, F.A.C.; and other provisions of Florida law.

33  
34 The administrative review process performed by Boards and special magistrates is  
35 separate and different from the mass appraisal development process performed by  
36 property appraisers.

37  
38 In administrative reviews, Boards and special magistrates are not authorized to perform  
39 appraisal development and must not perform appraisal development.

40

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1 In administrative reviews, Boards and special magistrates are not authorized to perform  
2 any independent factual research into attributes of the subject property or any other  
3 property.

4  
5 Boards and special magistrates must follow the provisions of law on the administrative  
6 review of assessments. See Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10,  
7 and 12D-16, F.A.C.; and other provisions of Florida law.

8  
9 In establishing revised just values when required by law, Boards and special  
10 magistrates are bound by the same standards and practices as property appraisers.  
11 See Rule 12D-10.003(1), F.A.C., treated favorably in Bystrom v. Equitable Life Assurance  
12 Society, 416 So.2d 1133 (Fla. 3d DCA 1982), and see Section 194.301, F.S., as amended by  
13 Chapter 2009-121, Laws of Florida (House Bill 521).

14  
15 \* However, when observing this requirement, Boards and special magistrates must  
16 act within their scope of authority.

17  
18 The effective date of administrative review is January 1 each year, and the real property  
19 interest to be reviewed is the unencumbered fee simple estate.

20  
21 The Board or special magistrate has no authority to develop original just valuations of  
22 property and may not take the place of the property appraiser, but shall revise the  
23 assessment when required under Florida law. See Rule 12D-10.003(1), F.A.C., and Section  
24 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

25  
26 \* See Simpson v. Merrill, 234 So.2d 350 (Fla. 1970), stating that a court may not take the place  
27 of the property appraiser but may reduce the assessment.

28  
29 \* Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding  
30 that the determination of the weight to be accorded evidence rests upon the trial judge, as  
31 trier of facts, and if competent substantial evidence is introduced demonstrating the  
32 assessment to be erroneous, the judge may reduce that assessment.

33  
34 The Board or special magistrate is required to revise the assessment under the  
35 conditions specified in Section 194.301, F.S., as amended by Chapter 2009-121, Laws  
36 of Florida (House Bill 521). These conditions are described in detail later in this module.

37  
38 *“In establishing a revised just value, the board or special magistrate is not restricted to*  
39 *any specific value offered by one of the parties.”* See Rule 12D-9.027(2)(b)3.a., F.A.C.

40  
41 \* Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding  
42 that the reviewing judge could arrive at a value that was different from either of the values

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1 presented by the parties when the judge's value was based on competent substantial evidence  
2 in the record.

3  
4 The Board or special magistrate is authorized to make calculations and to make an  
5 adjustment to the property appraiser's value based on competent substantial evidence  
6 of just value in the record. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws  
7 of Florida (House Bill 521), and see Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977),  
8 stating that when the record contains competent substantial evidence of value the court may  
9 make necessary value calculations or adjustments based on such evidence.

10  
11 If the hearing record does not contain competent substantial evidence of just value, the  
12 Board or special magistrate cannot substitute its own independent judgment. See Section  
13 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see  
14 Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977), stating that in the absence of  
15 competent substantial evidence of value the court cannot substitute its own independent  
16 judgment.

17  
18 The Board or special magistrate has no authority to adjust assessments across-the-  
19 board. Their authority to review just valuations is limited to the review of individual  
20 petitions filed. See Spooner v. Askew, 345 So.2d 1055 (Fla. 1976).

21  
22 The Board has the limited function of reviewing and correcting individual assessments  
23 developed by the property appraiser. See Bath Club, Inc. v. Dade County, 394 So.2d 110  
24 (Fla. 1981).

25  
26 The Board has no authority to review, on its own volition, a decision of the property  
27 appraiser to deny an exemption. See Redford v. Department of Revenue, 478 So.2d 808  
28 (Fla. 1985).

29  
30 *"For the purposes of review of a petition, the board may consider assessments among*  
31 *comparable properties within homogeneous areas or neighborhoods."* See Subsection  
32 194.034(5), F.S.

33  
34 In administrative reviews, Boards and special magistrates are not authorized to consider  
35 any evidence except evidence properly presented by the parties and properly admitted  
36 into the record for consideration. See Rule 12D-9.025(4)(a), F.A.C.

37  
38 In addition to admitted evidence, Boards and special magistrates are authorized to  
39 consider only the following items in administrative reviews:

40  
41 1. Legal advice from the Board legal counsel;

42

- 1 2. Information contained or referenced in the Department's Uniform Policies and  
2 Procedures Manual and Accompanying Documents;
- 3
- 4 3. Information contained or referenced in the Department's training for value  
5 adjustment boards and special magistrates; and  
6
- 7 4. Professional texts that pertain only to professionally accepted appraisal practices  
8 that are not inconsistent with Florida law.  
9

### 10 **Legal Limitations on Administrative Reviews**

11 No evidence shall be considered by the Board or special magistrate except when  
12 presented during the time scheduled for the petitioner's hearing or at a time when the  
13 petitioner has been given reasonable notice. See Subsection 194.034(1)(g), F.S. Also, see  
14 Rule 12D-9.025(4)(a), F.A.C.  
15

16 Other provisions of law address the responsibilities of petitioners and property  
17 appraisers that may affect the review and consideration of evidence at a hearing.  
18

19 \* The Board or special magistrate must consult with the Board legal counsel on any  
20 questions about the review and consideration of evidence.  
21

22 In administrative reviews, the Board or special magistrate shall not consider the tax  
23 consequences of the valuation of a specific property. See Rule 12D-10.003(1), F.A.C.  
24

25 The Board or special magistrate has no power to grant relief by adjusting the value of a  
26 property on the basis of hardship of a particular taxpayer. See Rule 12D-10.003(1), F.A.C.  
27

28 A just valuation challenge must stand or fall on its own validity, unconnected with the  
29 just value of any prior or subsequent year. See Keith Investments, Inc. v. James, 220 So.2d  
30 695 (Fla. 4th DCA 1969); Also, see Dade County v. Tropical Park, Inc., 251 So.2d 551 (Fla. 3rd  
31 DCA 1971).  
32

33 The prior year's just value is not competent evidence of just value in the current year,  
34 even when there is no evidence showing a change in circumstances between the two  
35 dates of assessment. See Simpson v. Merrill, 234 So.2d 350 (Fla. 1970).  
36

37 An appraisal report shall not be submitted as evidence in a value adjustment board  
38 proceeding in any tax year in which the person who performed the appraisal serves as a  
39 special magistrate to that county value adjustment board for the same tax year.  
40 Accordingly, in that tax year the board and any special magistrate in that county shall  
41

1 not admit such appraisal report into evidence and shall not consider any such appraisal  
2 report. See Rule 12D-9.025(4)(g), F.A.C.

3  
4  
5 **The Florida Real Property Appraisal Guidelines**

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

- 8  
9 1. *“The standard measures of value shall provide guidelines for the valuation of*  
10 *property and methods for property appraisers to employ in arriving at the just*  
11 *valuation of particular types of property consistent with section 193.011...”*  
12  
13 2. *“The standard measures of value shall assist the property appraiser in the valuation*  
14 *of property and be deemed prima facie correct, but shall not be deemed to establish*  
15 *the just value of any property.”*

16  
17 See Rule 12D-51.003, Florida Administrative Code, for more information on the Florida  
18 Real Property Appraisal Guidelines.

19  
20 **NOTICE:**

21 **The Florida Real Property Appraisal Guidelines are Out-of-Date**

22  
23 The Florida Real Property Appraisal Guidelines, developed under sections 195.002,  
24 195.032, and 195.062, F.S., were last revised in 2002 and are now out-of-date due to  
25 changes in law. The 2002 guidelines do NOT reflect the impacts of the landmark 2009  
26 enactments in sections 194.301 and 194.3015. Pertinent to the guidelines, the 2009  
27 legislation greatly increased the level of diligence required for developing and reporting  
28 just valuations and also established four additional, determinative standards for  
29 developing, reporting, and reviewing just valuations. These four additional standards  
30 are: 1) compliance with professionally accepted appraisal practices; 2) avoidance of  
31 arbitrarily different appraisal practices within groups of comparable property within the  
32 same county; 3) avoidance of superseded case law; and 4) correct application of an  
33 appropriate appraisal methodology. The 2002 real property appraisal guidelines cannot  
34 be used as any sort of standard for the property appraiser’s development and reporting  
35 of just valuations or for the VAB’s review of just valuations. Rather, the current  
36 determinative legal standards to be used for just valuation development, reporting, and  
37 review are listed under the seven overarching standards for valid just valuations  
38 presented below herein. Such standards reflect the 2009 enactments involving sections  
39 194.301, 193.011, and 194.3015, F.S.

40  
41 More information on these 2009 enactments is presented in a following section titled  
42 “The Seven Overarching Standards for Valid Just Valuations.”

1  
2 A copy of the 2002 real property guidelines is available at:  
3 <http://floridarevenue.com/property/Documents/FLrpg.pdf>  
4

5  
6 **Florida Information on Appraisal Development**

7 In the context of Florida ad valorem tax law, appraisal development is the act, by an  
8 appraiser, of applying the appraisal process to arrive at valid just valuations.  
9

10 More information on Florida's standards for appraisal development is in a following  
11 section titled "The Seven Overarching Standards for Valid Just Valuations."  
12

13 Section 4, Article VII, of the Florida Constitution, requires a just valuation of all property  
14 for ad valorem taxation, with certain conditions.  
15

16 Florida's constitution has "*delegated to the Legislature the responsibility for deciding the*  
17 *specifics of how that 'just valuation' would be secured.*" Sunset Harbour Condominium  
18 Ass'n v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Collier County v. State, 733 So.2d  
19 1012, 1019 (Fla. 1999).  
20

21 The Florida Legislature has effectuated the constitutional requirement for just valuations  
22 by specifying just valuation standards in several statutes, as explained below in a  
23 section titled "The Seven Overarching Standards for Valid Just Valuations."  
24

25 Regarding section 193.011, in 1963 the Legislature enacted the initial version of the first  
26 seven just valuation factors, effective January 1, 1964. See Chapter 63-250, Laws of  
27 Florida, creating Section 193.021, F.S., which was re-numbered in 1969 as Section 193.011,  
28 F.S., by Chapter 69-55, Laws of Florida.  
29

30 In 1965, the Florida Supreme Court held that just value was synonymous with fair  
31 market value and defined fair market value as: "*the amount a purchaser willing but not*  
32 *obliged to buy, would pay to one willing but not obliged to sell.*" See Walter v. Schuler, 176  
33 So.2d 81 (Fla. 1965).  
34

35 \* Neither the term "fair market value" nor the term "market value" appears in the  
36 Florida Constitution. The term "just valuation" appears in the constitution once and  
37 the term "just value" appears in the constitution a total of 22 times, all of which terms  
38 appear in Article VII pertaining to the valuation of property for ad valorem taxation.  
39

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

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1  
2 Then, in 1967, the Legislature added the eighth just valuation criterion (net proceeds of  
3 sale) as a new Subsection 193.021(8), F.S. See Chapter 67-167, Laws of Florida, creating  
4 Subsection 193.021(8), F.S., which was re-numbered in 1969 as Subsection 193.011(8), F.S., by  
5 Chapter 69-55, Laws of Florida.

6  
7 Subsection 193.011(8), F.S., generally known as the “eighth criterion,” was last  
8 amended in 1979 and is presented below in its entirety.

9  
10 ~~“The net proceeds of the sale of the property, as received by the seller, after deduction  
11 of all of the usual and reasonable fees and costs of the sale, including the costs and  
12 expenses of financing, and allowance for unconventional or atypical terms of financing  
13 arrangements. When the net proceeds of the sale of any property are utilized, directly or  
14 indirectly, in the determination of just valuation of realty of the sold parcel or any other  
15 parcel under the provisions of this section, the property appraiser, for the purposes of  
16 such determination, shall exclude any portion of such net proceeds attributable to  
17 payments for household furnishings or other items of personal property.”~~

18  
19 ~~When the eighth criterion was added in 1967 to the statute containing just valuation  
20 factors, the Legislature apparently provided discretion to property appraisers that would  
21 allow for, but not require, just value to be a number different than before enactment of  
22 the “net proceeds of sale” factor.~~

23  
24 ~~The rule of statutory interpretation is to assume that the Legislature intended its  
25 amendment to serve a useful purpose. “Likewise, when a statute is amended, it is  
26 presumed that the Legislature intended it to have a meaning different from that  
27 accorded to it before the amendment.” Carlisle v. Game and Freshwater Fish Commission,  
28 354 So.2d 362 (Fla. 1977); see also Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st  
29 DCA 1998).~~

30  
31 ~~For many years, Florida property appraisers have interpreted subsection 193.011(8),  
32 F.S., by applying across-the-board, eighth-criterion adjustments in arriving at just  
33 valuations of real property.~~

34  
35 ~~Since its enactment and amendments, this eighth just valuation criterion has been  
36 applied by property appraisers in actual practice to produce a just value for real property  
37 that is generally less than fair market value.~~

38  
39 ~~In 1984, when reviewing a 1980 assessment, a federal appellate court found that just  
40 value as determined under Subsection 193.011(8), F.S., does not represent full market  
41 value. See Louisville and Nashville Railroad Co. v. Department of Revenue, State of Fla., 736  
42 F.2d 1495 (11th Cir. (Fla.) July 24, 1984).~~

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1  
2 A Florida appellate court stated the following in an example regarding the eighth  
3 criterion: “*Subtracting the \$15,000 (cost of sale) from the \$100,000 selling price leaves*  
4 *a net value of \$85,000. We find no impropriety in using this approach to valuation.*” See  
5 *Southern Bell Telephone and Telegraph Co. v. Broward County*, 665 So.2d 272 (Fla. 4th DCA  
6 1995) review denied 673 So.2d 30 (Fla. 1996).

7  
8 The eighth criterion is addressed in more detail in the last three sections of this module.

9  
10 Florida law defines real property as land, buildings, fixtures, and all other improvements  
11 to land. See Subsection 192.001(12), F.S.

12  
13 Florida law defines personal property as being divided into the following four categories:  
14 1) household goods, 2) intangible personal property, 3) inventory, and 4) tangible  
15 personal property. See Subsection 192.001(11), F.S.

16  
17 Subsection 193.011(8), F.S., states the following in pertinent part: “*When the net*  
18 *proceeds of the sale of any property are utilized, directly or indirectly, in the*  
19 *determination of just valuation of realty of the sold parcel or any other parcel under the*  
20 *provisions of this section, the property appraiser, for the purposes of such*  
21 *determination, shall exclude any portion of such net proceeds attributable to payments*  
22 *for household furnishings or other items of personal property.*”

23  
24 The just value of any personal property must be excluded from just valuations of real  
25 property.

### 26 27 28 **The Eight Factors of Just Valuation in Section 193.011, F.S.**

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

33  
34 Section 193.011, Florida Statutes, provides the following on just valuation.

35  
36 **“Factors to consider in deriving just valuation.** – *In arriving at just valuation as*  
37 *required under s. 4, Art. VII of the State Constitution, the property appraiser shall take*  
38 *into consideration the following factors:*

39  
40 (1) *The present cash value of the property, which is the amount a willing purchaser*  
41 *would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash*  
42 *or the immediate equivalent thereof in a transaction at arm's length;*

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- 1  
2 (2) *The highest and best use to which the property can be expected to be put in the*  
3 *immediate future and the present use of the property, taking into consideration the*  
4 *legally permissible use of the property, including any applicable judicial limitation, local*  
5 *or state land use regulation, or historic preservation ordinance, and any zoning*  
6 *changes, concurrency requirements, and permits necessary to achieve the highest and*  
7 *best use, and considering any moratorium imposed by executive order, law, ordinance,*  
8 *regulation, resolution, or proclamation adopted by any governmental body or agency or*  
9 *the Governor when the moratorium or judicial limitation prohibits or restricts the*  
10 *development or improvement of property as otherwise authorized by applicable law.*  
11 *The applicable governmental body or agency or the Governor shall notify the property*  
12 *appraiser in writing of any executive order, ordinance, regulation, resolution, or*  
13 *proclamation it adopts imposing any such limitation, regulation, or moratorium;*  
14  
15 (3) *The location of said property;*  
16  
17 (4) *The quantity or size of said property;*  
18  
19 (5) *The cost of said property and the present replacement value of any improvements*  
20 *thereon;*  
21  
22 (6) *The condition of said property;*  
23  
24 (7) *The income from said property; and*  
25  
26 (8) *The net proceeds of the sale of the property, as received by the seller, after*  
27 *deduction of all of the usual and reasonable fees and costs of the sale, including the*  
28 *costs and expenses of financing, and allowance for unconventional or a typical terms of*  
29 *financing arrangements. When the net proceeds of the sale of any property are utilized,*  
30 *directly or indirectly, in the determination of just valuation of realty of the sold parcel or*  
31 *any other parcel under the provisions of this section, the property appraiser, for the*  
32 *purposes of such determination, shall exclude any portion of such net proceeds*  
33 *attributable to payments for household furnishings or other items of personal property.”*

34  
35 Section 193.011 is now part of the determinative just valuation standards provided in  
36 sections 194.301 and 194.3015 and in other applicable law, as explained in the next  
37 section titled “The Seven Overarching Standards for Valid Just Valuations.”  
38  
39

1 **The Seven Overarching Standards for Valid Just Valuations**

2 The 2009 statutory changes in sections 194.301 and 194.3015, F.S., greatly increased  
3 the standard of care (level of diligence) for the county appraiser's development and  
4 reporting of just valuations for ad valorem taxation in Florida.

5  
6 The 2009 changes also established four additional, determinative statutory standards  
7 for valid just valuations, as follows: 1) compliance with professionally accepted appraisal  
8 practices, 2) avoidance of arbitrarily different appraisal practices within groups of  
9 comparable property within the same county, 3) avoidance of superseded case law, and  
10 4) correct application of an appropriate appraisal methodology.

11  
12 Under Florida's current legal framework for just valuations, there are seven overarching  
13 standards for valid just valuations. These seven standards must be read and applied  
14 together, so that each is given appropriate and lawful meaning in light of the facts.

15  
16 Compliance with these seven standards requires the appraiser to correctly apply the  
17 appraisal process and "...*this important function requires expertise, diligence, sound*  
18 *judgment, and objectivity...*" See *Uniform Appraisal Standards for Federal Land Acquisition*  
19 *2016* (Appraisal Foundation), page 203.

20  
21 These seven overarching standards are listed and described below.

22  
23 **1. Compliance with Professionally Accepted Appraisal Practices for Appraisal**  
24 **Development and Appraisal Reporting**

25  
26 The section 194.301 standard of professionally accepted appraisal practices applies to  
27 the entire appraisal process that includes both appraisal development and appraisal  
28 reporting, each of which are addressed separately below.

29  
30 Professionally accepted appraisal practices require appraisers to recognize and comply  
31 with current laws and regulations that apply to the appraiser or to the appraisal  
32 assignment. See Competency Rule, *Uniform Standards of Professional Appraisal Practice,*  
33 *2020-2021 Edition* (USPAP), page 11.

34  
35 Compliance with professionally accepted appraisal practices encompasses compliance  
36 with all other law comprising the seven overarching standards.

37  
38 Professionally accepted appraisal practices comprise a voluminous set of practices set  
39 forth in thousands of pages of professional appraisal references. The current edition of  
40 USPAP is a set of standards consisting of 58 pages that address both appraisal and  
41 appraisal review for all types of property.

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

3  
4 While USPAP is a useful source of information on professionally accepted appraisal  
5 practices, it not a substitute for such practices.

### 6 7 Key Elements of Appraisal Development 8 Under Professionally Accepted Appraisal Practices

9  
10 In the context of Florida ad valorem tax law, appraisal development is the act, by an  
11 appraiser, of applying the appraisal process to arrive at valid just valuations.

12  
13 “Relevant characteristics” is a core appraisal term defined as: *“features that may*  
14 *affect a property’s value or marketability such as legal, economic, or physical*  
15 *characteristics.”* See Definitions, *Uniform Standards of Professional Appraisal Practice,*  
16 *2020-2021 Edition* (Washington, DC: The Appraisal Foundation), page 5.

17  
18 Under professionally accepted appraisal practices, the three categories of appraisal  
19 data that must be applied in the appraisal process are: legal, physical, and economic.  
20 See Standard 5, Mass Appraisal Development, *Uniform Standards of Professional Appraisal*  
21 *Practice, 2020-2021 Edition,* page 33. Also, see section 193.1142(1)(c)2., F.S.

22  
23 Appraisers are required *“to use due diligence and due care.”* See Competency Rule,  
24 *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition,* page 11.

25  
26 An appraiser’s valuation must be *“based on careful scrutiny of all the data available.”*  
27 See *CSX Transp., Inc. v. Ga. Bd. of Equalization,* 552 U.S. 9 (2007).

28  
29 Appraisers have the *“...responsibility to obtain knowledge of all pertinent facts and*  
30 *circumstances that can be acquired with diligent inquiry and search.”* See *Uniform*  
31 *Appraisal Standards for Federal Land Acquisition 2016* (Appraisal Foundation), page 204.

32  
33 *“The appraiser must be diligent in data collection and competently apply the accepted*  
34 *methods and techniques of the appraisal profession...”* See *Uniform Appraisal Standards*  
35 *for Federal Land Acquisition 2016* (Appraisal Foundation), page 203.

36  
37 For appraisal evidence to support a just valuation, the evidence must be relevant to the  
38 subject property and must satisfy each of the just valuation standards provided in law.

39  
40 The three approaches to just valuation are: 1) the cost less depreciation approach, 2)  
41 the sales comparison approach, and 3) the income capitalization approach.

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- 1 • Each of the three approaches has variants, depending on: 1) the legal, physical, and  
2 economic attributes of the subject property; 2) the availability of appraisal data; and  
3 3) the appropriate appraisal methodology.  
4

5 Generally, property appraisers use mass appraisal techniques to develop just valuations  
6 each year, but property appraisers may also use single-property appraisal techniques.  
7

8 When properly applied in compliance with all requirements of law, both mass appraisal  
9 and single-property appraisal are professionally accepted appraisal practices.  
10

11 It is implicit in mass appraisal that, even when properly specified and calibrated mass  
12 appraisal models are used, some individual value conclusions will not meet standards of  
13 reasonableness, consistency, and accuracy. See Standard 5, Mass Appraisal Development,  
14 *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition*, page 37.  
15

16 Regardless of the appraisal approach or technique used to develop a particular just  
17 value, the approach, technique, and value are subject to review to determine whether  
18 the appraisal process complies with all applicable legal standards.  
19

20 Summarized below are some key elements of the standard of care (level of diligence)  
21 for development of just valuations for Florida ad valorem tax purposes:  
22

- 23 • Identify the legal, physical, and economic attributes of the subject property  
24
- 25 • Identify and comply with all applicable law, and avoid superseded case law  
26
- 27 • Determine the required data, research, and analysis, and identify the professionally  
28 accepted appraisal practices and an appropriate appraisal methodology  
29
- 30 • Collect, analyze, and maintain legal, physical, and economic data as necessary for  
31 credible valuations that comply with applicable law  
32
- 33 • Apply due diligence and due care in the appraisal process, avoid carelessness and  
34 negligence, and avoid significant errors of commission and omission  
35
- 36 • Comply with each of the 193.011 factors consistent with all other just valuation  
37 standards (avoid cursory consideration of 193.011 factors, correctly apply the factors  
38 needed for a credible and lawful just valuation, and develop professionally accepted  
39 reasons for not applying any factor not applied)  
40

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- 1 • Avoid appraisal practices that are arbitrarily different from the appraisal practices  
2 applied to other comparable property in the same county  
3
- 4 • Correctly apply an appropriate appraisal methodology that complies with  
5 professionally accepted appraisal practices and each of the other legal standards  
6
- 7 • Reconcile data and analyses used, and correctly employ quality review procedures  
8

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

9  
10  
11  
12 Professionally accepted appraisal practices require communicating, or reporting, the  
13 appraisal process used to develop the just valuation. An appraisal report is any  
14 communication, written or oral, about the appraisal process applied in just valuations.  
15

16 Appraisal reporting is part of the appraisal process and is how the appraiser  
17 demonstrates compliance with each of the just valuation standards provided by law.  
18

19 Conclusory statements made by an appraiser reporting an appraisal process are not  
20 sufficient and are not credible. See Scripps Howard Cable Co. v. Havill, 665 So.2d 1071,  
21 1077 (Fla. 5th DCA 1995), approved, 742 So.2d 210 (Fla. 1998).  
22

23 The text, *Fundamentals of Mass Appraisal*, published in 2011 by the International  
24 Association of Assessing Officers, pages 4-5, lists appraisal reporting as part of the  
25 appraisal process and then states in pertinent part:  
26

27 *“Professional standards, however, require all appraisers to work systematically,*  
28 *document their work, communicate their opinions of value clearly, and behave ethically.”*  
29

30 The text, *The Appraisal of Real Estate, Fifteenth Edition*, published in 2020 by the  
31 Appraisal Institute, pages 31 and 37, lists appraisal reporting as part of the appraisal  
32 process and then states in part as follows:  
33

34 *“The report of the value opinion or conclusion addresses the data analyzed, the*  
35 *methods applied, and the reasoning that led to the value conclusion and does so in a*  
36 *manner that enables the intended users to properly understand the appraiser’s findings*  
37 *and conclusions. The objective of the appraisal report is to communicate the valuation*  
38 *process with sufficient supporting evidence and logic to ensure that the assignment*  
39 *results are credible for the intended use.”*  
40

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

4  
5 “provide sufficient information to enable the client and intended users to have  
6 confidence that the process and procedures used conform to accepted methods and  
7 result in credible value conclusions;”  
8

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

10  
11 “The 2009 legislation requires the Court to determine whether the appraiser used an  
12 appropriate methodology in making the assessment. To allow the Court to make this  
13 determination, the property appraiser must present sufficient evidence that describes  
14 the appraisal methodology and explains how and why it was applied in valuing the  
15 Subject Property. Under section 194.301(1), the appraiser has the burden of going  
16 forward and presenting testimonial and documentary evidence explaining how the  
17 appraiser satisfied each of the just valuation criteria.”

18 See Dillard's, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).  
19

20 Summarized below are some key elements of the standard of care (level of diligence)  
21 for just valuation reporting:

- 22 • Must provide meaningful disclosure of procedures applied in the appraisal process
- 23 • Must be relevant to the legal, physical, and economic attributes of the property, each  
24 of the applicable legal criteria, and the appraisal process
- 25 • Must be credible in the context of Florida ad valorem property tax appraisal
- 26 • Must be clear and accurate to enable intended users to understand the appraisal  
27 process
- 28 • Must include explanations and reasons, addressing each of the valuation approaches  
29 and each of the applicable legal criteria, regarding what was actually done and how  
30 and why, in developing the just value
- 31 • Must provide lawful and professionally accepted explanations and reasons for not  
32 applying a legal criterion or not applying an appraisal approach
- 33 • Must be sufficient for intended users to understand how and why the just value was  
34 developed via the methodology used
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42

- 1 • Must avoid misleading statements, conclusory statements, and superseded case law  
2  
3  
4

5 **2. Compliance with Each of the Just Valuation Factors in Section 193.011, F.S.**  
6

7 After the landmark 2009 legislation, the eight just valuation factors in section 193.011  
8 are now incorporated into section 194.301 in three places.  
9

- 10 • These eight just valuation factors must now be applied together with the other just  
11 valuation standards in sections 194.301 and 194.3015, F.S., and in other applicable  
12 law, so that each standard is given professionally accepted and lawful meaning.  
13  
14 • The method of just valuation and the weight to be given to each of the section  
15 193.011 factors is now governed solely by: 1) the legal, physical, and economic  
16 characteristics of the subject property; 2) the four additional determinative standards  
17 in sections 194.301 and 194.3015, F.S.; and 3) all other applicable law.  
18  
19 • In just valuations under current law, it is necessary to actually apply the section  
20 193.011 factors that are appropriate for compliance with the four new determinative  
21 standards in sections 194.301 and 194.3015 and all other applicable law.  
22  
23 • Under the dictates of section 194.301 and 194.3015, F.S., for any section 193.011  
24 factor not applied in a particular just valuation, the appraiser must report a clear,  
25 logical, fact-based, and professionally accepted reason for excluding the factor.  
26

27 Pre-2009 just valuation case law is replete with obsolete statements indicating a much  
28 lower level of diligence (standard of care) for developing and reporting just valuations  
29 than required by current law, and these obsolete statements must be avoided.  
30

31 Just valuation evidence, including evidence intended to show the property appraiser's  
32 compliance with each of the section 193.011 factors, "must be real, material, pertinent,  
33 and relevant evidence, as opposed to ethereal, metaphysical, speculative, theoretical,  
34 or hypothetical, and it must have definite probative value." See Singh v. Walt Disney  
35 Parks, --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).  
36

37 The legal, physical, and economic characteristics of the subject property must be  
38 reflected in the appraisal data applied for the eight factors in section 193.011 and must  
39 be applied in all just valuation approaches.  
40

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

4  
5 Appraisal approaches (methods), the application of legal standards including the section  
6 193.011 factors, and the validity of resulting values are interconnected and cannot  
7 logically be separated.

8  
9 In administrative reviews, the overarching legal standards should be applied in  
10 determining whether the appraisal methodology used in making a value  
11 assessment is appropriate under the circumstances and this, in turn, should be  
12 applied in determining whether the value assessment is valid.

13  
14 Below are two examples of how court decisions have correctly applied the section  
15 193.011 factors in reviewing appraisal methodology and resulting just valuations.

- 16  
17 • Though these examples are pre-2009, they show the connection between legal  
18 criteria, appraisal methods, and values, and are used here for that purpose.

19  
20 Example 1: The court's decision described a mathematical connection between  
21 "erroneous consideration" of statutory criteria, an "improper" appraisal method, and  
22 an excessive value. See Holly Ridge Ltd. Partnership v. Pritchett, 936 So.2d 694, 697-  
23 698 (Fla. 5th DCA 2006), rehearing denied.

24  
25 Example 2: The court's decision connected the appraisal method, the application of  
26 legal criteria, and the rejection of an appraised value, in holding as follows:

27  
28 "The trial court rejected the appellants' appraisal because it found that their appraisal  
29 method failed to take into consideration all the factors set forth in section 193.011,  
30 Florida Statutes (1981)."

31  
32 "Failure to consider one or more of the factors set forth in section 193.011 is sufficient to  
33 invalidate an appraisal done by a tax assessor..."

34  
35 "We also think the lower court correctly rejected appellants' appraisal because the  
36 method used was too speculative."

37  
38 See Muckenfuss v. Miller, 421 So.2d 170, 173-174 (Fla. 5th DCA 1982), petition for review  
39 denied, 430 So.2d 450, 451 (Fla. 1983).

40  
41 **3. Avoidance of Arbitrarily Different Appraisal Practices Within Groups of**  
42 **Comparable Property Within the Same County.**

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1  
2 Section 194.301(2)(a)3., F.S., provides that to withstand judicial or administrative  
3 review, a just valuation cannot be: "...*arbitrarily based on appraisal practices that are*  
4 *different from the appraisal practices generally applied by the property appraiser to*  
5 *comparable property within the same county.*"

6  
7 Along similar lines, section 195.0012, F.S., expresses legislative intent for assessment  
8 uniformity including "...*uniform assessment as between property within each county...*"

9  
10 The U.S. Supreme Court has also emphasized that "*the uniformity and equality required*  
11 *by law*" is of paramount concern in property assessment valuations. See Sioux City  
12 Bridge Co. v. Dakota Cty. Neb., 260 U.S. 441, 446–47 (1923), cited in Southern Bell Tel. & Tel.  
13 Co. v. Dade Cty., 275 So. 2d 4, 8 (Fla. 1973).

14  
15 Avoiding arbitrarily different appraisal practices within groups of comparable property  
16 within the same county supports the goal of assessment uniformity.

17  
18 Selective reappraisal is an example of arbitrarily different appraisal practices. The text,  
19 *Mass Appraisal of Real Property*, published in 1999 by the International Association of  
20 Assessing Officers, page 315, explains selective reappraisal, stating in pertinent part:

21  
22 "*The reliability of sales ratio statistics depends on unsold parcels being appraised in the*  
23 *same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio*  
24 *results, possibly rendering them useless. Equally important, selective reappraisal of*  
25 *sold parcels ("sales chasing") is a serious violation of basic appraisal uniformity and is*  
26 *highly unprofessional.*"

27  
28 Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See  
29 Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).

### 30 31 **4. Avoidance of Superseded Case Law.**

32  
33 In 2009, the Florida Legislature made crystal clear its intent to supersede case law that  
34 is inconsistent with legislative enactments in sections 194.301 and 194.3015, F.S.

35  
36 The 2009 enactments re-engineered the development, reporting, and review of just  
37 valuations in Florida. Yet, in some cases, these major statutory changes have not been  
38 applied in practice and this continues to be a serious problem.

39  
40 Pre-2009 case law, as well as some post-2009 legal arguments based on obsolete pre-  
41 2009 case law, do NOT reflect the major statutory changes enacted in 2009.

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

4  
5 The last sentence in subsection 194.301(1), F.S., now states: “*The provisions of this*  
6 *subsection preempt any prior case law that is inconsistent with this subsection.*”

7  
8 Further, section 194.3015, F.S., now states in its entirety:

9  
10 “(1) *It is the express intent of the Legislature that a taxpayer shall never have the*  
11 *burden of proving that the property appraiser’s assessment is not supported by any*  
12 *reasonable hypothesis of a legal assessment. All cases establishing the every-*  
13 *reasonable-hypothesis standard were expressly rejected by the Legislature on the*  
14 *adoption of chapter 97-85, Laws of Florida. It is the further intent of the Legislature that*  
15 *any cases published since 1997 citing the every-reasonable-hypothesis standard are*  
16 *expressly rejected to the extent that they are interpretive of legislative intent.*”

17  
18 “(2) *This section is intended to clarify existing law and apply retroactively.*”

19  
20 In 1997, the Florida Legislature, in an attempt to implement fairness for property  
21 taxpayers, enacted the original version of section 194.301, F.S., stating in pertinent part:

22  
23 “*In no case shall the taxpayer have the burden of proving that the property appraiser’s*  
24 *assessment is not supported by any reasonable hypothesis of a legal assessment.*”

25  
26 In the 1996 to 1998 period, multiple law articles addressed issues in the assessment  
27 appeal process and legislative efforts to address fairness for property taxpayers.

28  
29 In 2001, despite the 1997 enactment of section 194.301, F.S., in Wal-Mart v. Todora,  
30 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the court issued a decision that actually applied  
31 the “*reasonable hypothesis*” standard, stating:

32  
33 “*Because there are so many well-recognized approaches for arriving at an appraisal,*  
34 *the appraiser’s decision may be overturned only if there is no reasonable hypothesis to*  
35 *support it.*”

36  
37 In 2002, again despite the 1997 enactment of section 194.301, in Mazourek v. Wal-  
38 Mart, 831 So. 2d 85, 91 (Fla. 2002), the court extended the error by quoting the 2001  
39 decision in Wal-Mart v. Todora, likewise stating:

40

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

4  
5 In 2006, the decision from In re Litestream Technologies, LLC, 337 B.R. 705, 710  
6 (Bkrcty. M.D. Fla. 2006) further extended the same error by quoting from Mazourek,  
7 instead of following the Legislature’s 1997 directive in section 194.301, F.S.

8  
9 Then, in 2009, the Florida Legislature completely amended section 194.301 and created  
10 section 194.3015, addressing in both the problem of superseded case law.

11  
12 In 2013 in CVS EGL Fruitville Sarasota FL, LLC and Holiday CVS, LLC. v. Todora, 124  
13 So. 3d 289 (Fla. 2d DCA 2013), the Second District Court of Appeal admitted the error it  
14 made in the aforementioned 2001 case of Wal-Mart v. Todora, and explained how this  
15 error was extended when the Florida Supreme Court quoted the error in its  
16 aforementioned 2002 decision in Mazourek v. Wal-Mart.

17  
18 Also, in CVS EGL, the Second District Court explained an example of the legislative  
19 intent behind the 2009 enactments in sections 194.301 and 194.3015, stating:

20  
21 “Because the legislature rejected the application of “any cases published since 1997  
22 citing the every-reasonable-hypothesis standard,” it follows that the legislature intended  
23 to supersede Todora and Mazourek. We must therefore give deference to the  
24 legislature and conclude that Todora and Mazourek are not controlling.”

25  
26 In July 2016, the difficulty with applying sections 194.301 and 194.3015 appeared in a  
27 final judgment (Singh v. Darden Restaurants, Inc.) where the trial court erred because it  
28 failed to apply standards in sections 194.301 and 194.3015, and instead applied  
29 obsolete case law standards based on assessment “*discretion*.”

30  
31 Then, in Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019),  
32 the Fifth District Court overturned the July 2016 trial judgment and explained how the  
33 trial judgment erroneously applied pre-2009 case law, stating in pertinent part:

34  
35 “...in its final judgment, the trial court cited to language from Mazourek v. Wal-Mart  
36 Stores, Inc., 831 So. 2d 85, 89 (Fla. 2002), that “[t]he property appraiser’s determination  
37 of assessment value is an exercise of administrative discretion within the officer’s field  
38 of expertise.” The Mazourek decision preceded the 2009 amendment to section  
39 194.301, Florida Statutes, where the Legislature articulated that the value of property  
40 must be determined by an appraisal methodology that met the criteria of section  
41 193.011 and professionally accepted appraisal practices.”

42

1  
2  
3  
4  
5 Other Examples of Superseded Case Law  
6

7 The holdings in some court decisions based on the legislatively rejected “*reasonable*  
8 *hypothesis*” standard show an interconnection between such standard and the obsolete  
9 concomitant (attendant) standards that also appeared in such holdings.

10  
11 For example, in CVS EGL (2013), the court rejected the concomitant standard of “*within*  
12 *the range of reasonable appraisals*” because of its interconnection with the legislatively  
13 rejected “*reasonable hypothesis*” standard.  
14

15 Eight examples of superseded case law are listed and described below.  
16

17 None of these superseded standards is harmless because they unequivocally reflect a  
18 lower standard of care and diligence for developing, reporting, and reviewing just values  
19 than the standards required by current law in sections 194.301 and 194.3015.  
20

21 VABs, VAB attorneys, and special magistrates must be diligent to avoid using any of  
22 these types of superseded standards and to reject any arguments espousing them.  
23

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

25 “*the core issue in any action challenging a tax assessment is the*  
26 *amount of the assessment, not the methodology utilized in arriving at the valuation*”  
27

28 In Bystrom v. Whitman, 488 So. 2d 520, 521 (Fla. 1986), the court applied this obsolete  
29 standard together with the rejected “*reasonable hypothesis*” standard.  
30

31 In 2007 in CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007), the U.S.  
32 Supreme Court emphasized the necessity of reviewing appraisal methodology in  
33 valuations disputes, stating: “*We do not see how a court can go about determining true*  
34 *market value if it may not look behind the State’s choice of valuation methods.*”  
35

36 In 2009, the Legislature enacted four new determinative just valuation standards, each  
37 providing methodological requirements for developing and reviewing just valuations.  
38

39 **Superseded Concomitant Standard No. 2:**

40 “*within the range of reasonable appraisals*”  
41

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

3  
4 “Regardless of which method was theoretically superior, the trial court was bound to  
5 uphold the appraiser’s determination if it was lawfully arrived at and within the range of  
6 reasonable appraisals, that is, if it was supported by any reasonable hypothesis of  
7 legality.”  
8

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

12  
13 “At no point during the trial court’s application of these standards should it consider  
14 whether the assessment is within the range of reasonable appraisals or whether it is  
15 supported by any reasonable hypothesis of legality.”  
16

17 **Superseded Concomitant Standard No. 3:**

18 “[t]he property appraiser’s determination of assessment value  
19 was an exercise of administrative discretion within the officer’s field of expertise”  
20

21 In Blake v. Xerox, 447 So. 2d 1348, 1350 (Fla. 1984), the decision linked this old  
22 standard with the legislatively rejected “*reasonable hypothesis*” standard.  
23

24 This obsolete statement runs afoul of diligence requirements in the current standards of  
25 professionally accepted appraisal practices and appropriate appraisal methodologies.  
26

27 In Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019), the  
28 court recognized this concomitant standard as being obsolete since 2009.  
29

30 **Superseded Concomitant Standard No. 4:**

31 “the method of valuation and the weight  
32 to be given each factor is left to the appraiser’s discretion”  
33

34 In Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the holding linked this  
35 obsolete standard with the legislatively rejected “*reasonable hypothesis*” standard and  
36 with the superseded “*within the range of reasonable appraisals*” standard.  
37

38 In its 2007 decision in CSX, the U.S. Supreme Court emphasized the necessity of  
39 reviewing appraisal methodology in ad valorem tax valuation disputes, stating: “We do  
40 not see how a court can go about determining true market value if it may not look  
41 behind the State’s choice of valuation methods.”  
42

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1 In 2009, the Legislature enacted four new determinative just valuation standards, each  
2 providing methodological requirements for developing and reviewing just valuations.

3  
4 The valuation method and the weight actually given to each section 193.011 factor can  
5 be proven only by the actual application and reporting of an appropriate appraisal  
6 process that complies with all applicable law and results in a valid just valuation.

7  
8 Thus, under current law, the valuation method and the weight given to each section  
9 193.011 factor are governed solely by the legal, physical, and economic characteristics  
10 of the subject property and by the appropriate application of all just valuation standards  
11 in sections 194.301 and 194.3015 and all other applicable law.

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

12  
13  
14 *“The determination of just value inherently and necessarily requires*  
15 *the exercise of appraisal judgment and broad discretion by Florida property appraisers.”*

16  
17 In Fla. Department of Revenue v. Howard, 916 So. 2d 640 (Fla. 2005), the decision  
18 references the two preceding obsolete statements based on “*discretion*,” along with this  
19 third variant of the obsolete “*discretion*” standard.

20  
21 This “*discretion*” variant was based on decades-old legal concepts from a time when the  
22 now legislatively rejected “*reasonable hypotheses*” standard held sway.

23  
24 Notably, the term “*discretion*” does not appear in the 2020-2021 edition of the Uniform  
25 Standards of Professional Appraisal Practice and, likewise, does not appear in the  
26 widely cited appraisal text, *The Appraisal of Real Estate, 15th Edition*, published in 2020  
27 by the Appraisal Institute.

28  
29 Regarding “*appraisal judgment*,” key excerpts from the *Uniform Appraisal Standards for*  
30 *Federal Land Acquisition 2016*, published by the Appraisal Foundation, pages 203-204,  
31 describe the diligent application of sound appraisal judgment in the appraisal process:

32  
33 *“Serving this important function requires expertise, diligence, sound judgment, and*  
34 *objectivity...”*

35  
36 *“The appraiser must be diligent in data collection and competently apply the accepted*  
37 *methods and techniques of the appraisal profession...”*

38  
39 *“Appraisers must exercise sound judgment based on known pertinent facts and*  
40 *circumstances, and it is their responsibility to obtain knowledge of all pertinent facts and*  
41 *circumstances that can be acquired with diligent inquiry and search. They must then*  
42 *weigh and consider the relevant facts, exercise sound judgment, and develop an*

1 *opinion that is completely unbiased by any consideration favoring either the landowner*  
2 *or the government.”*

3  
4 Thus, appraisal judgment is NOT a substitute for appraisal expertise, diligence, or  
5 objectivity. For valid just valuations, appraisal judgment must be sound and must be  
6 applied in compliance with the seven overarching standards for valid just valuations.

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

9 *“Appraisal is an art, not a science”*

10  
11 In 1969 in Powell v. Kelly 223 So. 2d 305 (Fla. 1969), court applied this obsolete  
12 standard along with the legislatively rejected “*reasonable hypothesis*” standard.

13  
14 In its 2007 decision on ad valorem appraisal methodology, the U.S. Supreme Court held  
15 that appraisal is an “*applied science*.” See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552  
16 U.S. 9 (2007), 552 U.S. 9 (2007).

17  
18 On appraisal being a science, Appendix A of the widely cited textbook, *The Appraisal of*  
19 *Real Estate, 15th Edition*, published in 2020 by the Appraisal Institute, states:

20  
21 *“Professional appraisal practice applies the scientific processes of economic analyses*  
22 *(i.e., the valuation process) to develop conclusions in an impartial, objective manner,*  
23 *without bias or any desire on the part of appraisers to accommodate their own interests*  
24 *or the interests of their clients. To form sound conclusions, appraisers avoid personal*  
25 *beliefs or biases and search for market evidence to support their appraisal opinions. It is*  
26 *this level of independence and freedom from either personal views or personal financial*  
27 *gain, and strict adherence to the scientific principles contained in the valuation process,*  
28 *that separate the profession of appraisal from other fields that also deal with real estate*  
29 *values.”*

30  
31 **Superseded Concomitant Standard No. 7:**

32 *“Because there are so many well-recognized approaches for arriving at an appraisal...”*

33  
34 In Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the Second District Court  
35 ignored section 194.301 and applied this obsolete concomitant standard together with  
36 the now legislatively rejected “*reasonable hypothesis*” standard, stating:

37  
38 *“Because there are so many well-recognized approaches for arriving at an appraisal,*  
39 *the appraiser’s decision may be overturned only if there is no reasonable hypothesis to*  
40 *support it.”*

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

4  
5 **Superseded Concomitant Standard No. 8:**

6 *“an appraiser may reach a correct result for the wrong reason”*  
7

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

11  
12 *“A tax assessment is presumed correct, and in order to successfully challenge it, the*  
13 *taxpayer must present proof which excludes every reasonable hypothesis of a legal*  
14 *assessment. That is, an assessor may reach a correct result for the wrong reason.”*  
15

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

18  
19 **5. Compliance with All Other Applicable Law.**

20  
21 Note: This listing of points of law is not exhaustive.

22  
23 Florida law defines real property as land, buildings, fixtures, and all other improvements  
24 to land. See Subsection 192.001(12), F.S.

25  
26 Florida law defines personal property as being divided into the following four categories:  
27 1) household goods, 2) intangible personal property, 3) inventory, and 4) tangible  
28 personal property. See Subsection 192.001(11), F.S.

29  
30 To avoid double taxation, the just value of any personal property must be excluded from  
31 just valuations of real property.

32  
33 Other applicable law includes just valuation standards for particular situations. These  
34 standards may exist in Florida Statutes or in currently applicable case law.

35  
36 Examples of other just valuation standards from statutes include the following:

- 37  
38 • Section 192.042(1), F.S., provides the January 1 date of assessment.  
39  
40 • Section 192.042(1), F.S., provides just valuation criteria for real property not  
41 substantially completed as of January 1.  
42

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- 1 • Sections 192.037(10), (11), and (12), F.S., provide additional just valuation criteria for  
2 timeshare real property.  
3
- 4 • Sections 193.017, 420.507(46), 420.5093(5) and (6), and 420.5099(5) and (6),  
5 provide additional just valuation criteria for low-income housing property.  
6
- 7 • Section 193.018, F.S., provides additional just valuation criteria for community land  
8 trust property.  
9
- 10 • Section 193.0237, F.S., provides definitions and a methodology for the assessment  
11 of multiple parcel buildings.  
12
- 13 • Section 193.501, F.S., provides additional just valuation criteria for certain  
14 conservation property.  
15

16 Other applicable law may also include current case law standards such as:

- 17
- 18 • Case law specifies fee simple estate as the interest to be appraised in just valuations.  
19 See Schultz v. TM Fla.-Ohio Realty, Ltd., 577 So.2d 573 (Fla. 1991), and see Dept. of  
20 Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 (Fla. 1977).  
21
- 22 • Case law precludes real property just valuations based on bulk ownership. See  
23 Interlachen Lakes Estates, Inc. v. Snyder, 304 So.2d 433 (Fla. 1973).  
24
- 25 • Case law precludes just valuation methods that include intangible value. See Scripps  
26 Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), and see Singh v. Walt Disney Parks,  
27 --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).  
28

### 29 **6. Correct Application of an Appropriate Appraisal Methodology**

30 After its 2009 amendment, section 194.301(1), F.S., provides in pertinent part:

31  
32  
33 *“However, a taxpayer who challenges an assessment is entitled to a determination by*  
34 *the value adjustment board or court of the appropriateness of the appraisal*  
35 *methodology used in making the assessment. The value of property must be*  
36 *determined by an appraisal methodology that complies with the criteria of s. 193.011*  
37 *and professionally accepted appraisal practices. The provisions of this subsection*  
38 *preempt any prior case law that is inconsistent with this subsection.”*  
39

40 An appropriate appraisal methodology is one that: 1) identifies and is appropriately  
41 based on the legal, physical, and economic characteristics of the subject property, 2)  
42 complies with overarching standards one through five, and 3) is correctly applied.

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1  
2 In Scripps Howard Cable Co. v. Havill, 665 So. 2d 1071 (Fla. 5th DCA 1995), *approved*,  
3 742 So. 2d 210 (Fla. 1998), the court held that the appraisal method under review was  
4 not appropriate under the circumstances and certified the following question:

5  
6 *“Is the Income/Unit Rule Method of Appraisal an Appropriate Method of Assessing the*  
7 *Tangible Personal Property of Television Cable Companies?”*

8  
9 Then, in Scripps Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), the Florida  
10 Supreme Court answered the certified question in the negative and approved the  
11 decision of the Fifth District, holding that the method was not appropriate because it  
12 unlawfully included the value of intangible property.

13  
14 In 2007, the U.S. Supreme Court held that disputes over ad valorem tax values require  
15 review of the appraisal methodology. See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552  
16 U.S. 9 (2007), 552 U.S. 9 (2007) (“We do not see how a court can go about determining true  
17 market value if it may not look behind the State’s choice of valuation methods”).

18  
19 In August 2020, the court issued its final decision in Singh v. Walt Disney Parks, ---  
20 So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020), stating in pertinent part:

21  
22 *“At trial, the parties agreed that the income approach to value was a*  
23 *professionally accepted appraisal practice and provided the most reliable*  
24 *indicator of value, but they disputed the proper methodology for performing such*  
25 *an assessment.”*

26  
27 *“Moreover, it ruled that even if the Rushmore method was a professionally accepted*  
28 *appraisal practice, it could not be used in a manner that violated Florida law. The trial*  
29 *court concluded that by including value attributable to Disney business activities on the*  
30 *Property, Appraiser applied the Rushmore method in a way that violated Florida law.”*

31  
32 *“We agree with the trial court that Appraiser, in the manner in which he applied the*  
33 *Rushmore method, impermissibly included the value of Disney’s intangible business*  
34 *assets in its assessment.”*

35  
36 The Disney decision shows even if an appraisal practice is professionally accepted in  
37 other contexts, it cannot be applied in a manner that violates another part of Florida law.

38  
39 Later, in October 2020, a trial court issued a final judgment stating as follows regarding  
40 appropriate appraisal methodology.

41

1 “The Property Appraiser failed to prove by a preponderance of the evidence that his  
2 assessment was arrived at by utilizing methodology complying with section 193.011 and  
3 professionally accepted appraisal practices. Additionally, the Court finds the Property  
4 Appraiser's sole reliance on a cost approach without considering and preparing at least  
5 one of an income and/or sales comparison approach for the Subject Property type was  
6 not an appropriate appraisal methodology used in making the assessment.”

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

8  
9 **7. A Just Valuation Developed and Reported in Compliance with Overarching**  
10 **Standards One through Six and Supported by a Preponderance of the Relevant**  
11 **and Credible Evidence**

12  
13 For a just valuation to withstand the scrutiny of review, it must be developed and  
14 reported in compliance with overarching standards one through six and must be  
15 supported by a preponderance of the relevant and credible just valuation evidence.

16  
17 **Petitioner Not Required to Present Opinion or Estimate of Value**

18 The petitioner is not required to provide an opinion or estimate of just value.

19  
20 No provision of law requires the petitioner to present an opinion or estimate of value.

21  
22 The Board or special magistrate is not authorized to require a petitioner to provide an  
23 opinion or estimate of just value.

24  
25 The petitioner has the option of choosing whether to present an opinion or estimate of  
26 just value.

27  
28  
29 **Presentation of Evidence by the Parties**

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

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

38  
39 Under Subsection 194.301(1), F.S., in a hearing on just value, the first issue to be  
40 considered is whether the property appraiser establishes a presumption of correctness.

41

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1 \* The property appraiser shall present evidence on this issue first. See Rule 12D-  
2 9.024(7), F.A.C.

3  
4 \* While the property appraiser is required to present evidence on this issue first, the  
5 Board or special magistrate must allow the petitioner a chance to present evidence  
6 on this issue before deciding whether the presumption of correctness is established.  
7

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

11  
12 If the property appraiser establishes a presumption of correctness by proving by a  
13 preponderance of the evidence that the just value assessment was arrived at by  
14 complying with Section 193.011, F.S., and professionally accepted appraisal practices,  
15 including mass appraisal standards, if appropriate, the petitioner must prove by a  
16 preponderance of the evidence that:  
17

- 18 1. The property appraiser's just valuation does not represent just value; or  
19
- 20 2. The property appraiser's just valuation is arbitrarily based on appraisal practices that  
21 are different from the appraisal practices generally applied by the property appraiser  
22 to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as  
23 amended by Chapter 2009-121, Laws of Florida (House Bill 521).  
24

25 However, if the property appraiser does not establish a presumption of correctness  
26 because he or she did not prove by a preponderance of the evidence that the just  
27 valuation was arrived at by complying with Section 193.011, F.S., and professionally  
28 accepted appraisal practices, including mass appraisal standards, if appropriate, the  
29 Board or special magistrate must take one of the two following actions:  
30

- 31 1. If the record contains competent substantial evidence of just value that cumulatively  
32 meets the requirements of Section 193.011, F.S., and professionally accepted  
33 appraisal practices, the Board or special magistrate must establish a revised just  
34 value; or  
35
- 36 2. If the record lacks such competent substantial evidence, the Board or special  
37 magistrate must remand the assessment to the property appraiser with appropriate  
38 directions with which the property appraiser must comply.  
39  
40

1 **Evaluation of Evidence by the Board or Special Magistrate**

2 Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special  
3 magistrate must:

- 4
- 5 1. Review the evidence presented by the parties;
  - 6
  - 7 2. Determine whether the evidence presented is admissible;
  - 8
  - 9 3. Admit the evidence that is admissible;
  - 10
  - 11 4. Identify the evidence presented to indicate that it is admitted or not admitted; and
  - 12
  - 13 5. Consider the admitted evidence.

14

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

17

18 *“No evidence shall be considered by the board or special magistrate except when*  
19 *presented and admitted during the time scheduled for the petitioner’s hearing, or at a*  
20 *time when the petitioner has been given reasonable notice.”* See Rule 12D-9.025(4)(a),  
21 F.A.C.

22

23 *“If a party submits evidence to the board clerk prior to the hearing, the board or special*  
24 *magistrate shall not review or consider such evidence prior to the hearing.”* See Rule  
25 12D-9.025(4)(b), F.A.C.

26

27 Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:

- 28
- 29 1. *“As the trier of fact, the board or special magistrate may independently rule on the*  
30 *admissibility and use of evidence.”*
  - 31
  - 32 2. *“If the board or special magistrate has any questions relating to the admissibility and*  
33 *use of evidence, the board or special magistrate should consult with the board legal*  
34 *counsel.”*
  - 35
  - 36 3. *“The basis for any ruling on admissibility of evidence must be reflected in the*  
37 *record.”*
  - 38
  - 39 4. *“The special magistrate may delay ruling on the question during the hearing and*  
40 *consult with board legal counsel after the hearing.”*
- 41

1 The Board or special magistrate shall consider the admitted evidence. See Rule 12D-  
2 9.025(1)(d), F.A.C.

3  
4 A property owner generally is qualified, on account of ownership, to testify regarding the  
5 just value of his or her property. See In re Steffen, 342 B.R. 861 (Bkrtcy. M.D. Fla. 2006).

6  
7 NOTE: More information on the admissibility of evidence is presented in Module 4 of  
8 this training.

### 9 10 11 **Sufficiency of Evidence**

12 When applied to evidence, the term “sufficient” is a test of adequacy. See Rule 12D-  
13 9.027(6), F.A.C.

14  
15 Sufficient evidence is admitted evidence that has enough overall weight, in terms of  
16 relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6),  
17 F.A.C.

18  
19 The Florida Supreme Court stated the following regarding sufficient evidence:  
20 *“Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character,*  
21 *weight, or amount, as will legally justify the judicial or official action demanded.”* See  
22 Tibbs v. State, 397 So.2d 1120 (Fla. 1981). Also, see Moore v. State, 800 So.2d 747 (Fla. 5th  
23 DCA 2001).

24  
25 A particular conclusion is justified when the overall weight of the admitted evidence  
26 meets the standard of proof that applies to the issue under consideration. See Rule 12D-  
27 9.027(6), F.A.C.

28  
29 The Board or special magistrate must consider the admitted evidence and determine  
30 whether it is sufficiently relevant and credible to reach the “preponderance of the  
31 evidence” standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-  
32 9.027(5), and 12D-9.027(6), F.A.C.

33  
34 Rule 12D-9.027(6), F.A.C., states the following in pertinent part: *“In determining*  
35 *whether the admitted evidence is sufficient for a particular issue under consideration,*  
36 *the board or special magistrate shall:*

- 37  
38 (a) *Consider the relevance and credibility of the admitted evidence as a whole,*  
39 *regardless of which party presented the evidence;*  
40  
41 (b) *Determine the relevance and credibility, or overall weight, of the evidence;*  
42

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- 1 (c) Compare the overall weight of the evidence to the standard of proof;  
2  
3 (d) Determine whether the overall weight of the evidence is sufficient to reach the  
4 standard of proof; and  
5  
6 (e) Produce a conclusion of law based on the determination of whether the overall  
7 weight of the evidence has reached the standard of proof.”  
8

9 For administrative reviews of just valuations, “relevant evidence” is evidence that is  
10 reasonably related, directly or indirectly, to the statutory criteria that apply to the just  
11 valuation of the petitioned property. See Rule 12D-9.025(2)(b), F.A.C.  
12

13 \* This description means the evidence meets or exceeds a minimum level of  
14 relevance necessary to be admitted for consideration, but does not necessarily  
15 mean that the evidence has sufficient relevance to legally justify a particular  
16 conclusion. See Rule 12D-9.025(2)(b), F.A.C.  
17

18 In evaluating the relevance of evidence, the Board or special magistrate must consider,  
19 as of the January 1 assessment date, how well the evidence relates to the petitioned  
20 property and to the statutory criteria found in Section 193.011, F.S., and in Section  
21 194.301, F.S.  
22

23 For administrative reviews of just valuations, “credible evidence” means evidence that is  
24 worthy of belief (believable). See *Black’s Law Dictionary, Eighth Edition*, page 596.  
25

26 NOTE: More information on evaluating the relevance and credibility of evidence is  
27 presented in Module 11 of this training.  
28

29 By itself, the property record card is not sufficient evidence for establishing a  
30 presumption of correctness for the assessment under Subsection 194.301(1), F.S.  
31

32 Materials describing the general appraisal practices of the property appraiser alone,  
33 without discussing how those practices were applied to the assessment at issue, are not  
34 sufficient to establish a presumption of correctness for the assessment. See Property Tax  
35 Informational Bulletin PTO 09-29.  
36

37 The approval of an assessment roll by the Department of Revenue is not evidence that  
38 a particular assessment was made in compliance with statutory requirements and is not  
39 sufficient to establish a presumption of correctness for the assessment. See Property Tax  
40 Informational Bulletin PTO 09-29.  
41  
42

1 **Requirements for Establishing a Presumption of Correctness**

2 A presumption of correctness for the assessment is not established unless the property  
3 appraiser proves by a preponderance of the evidence that the property appraiser's just  
4 valuation methodology complies with Section 193.011, F.S., and professionally  
5 accepted appraisal practices, including mass appraisal standards, if appropriate. See  
6 Rule 12D-9.027(2)(a), F.A.C.

7  
8 A presumption of correctness for the assessment is established only when the property  
9 appraiser proves by a preponderance of the evidence that the property appraiser's just  
10 valuation methodology complies with Section 193.011, F.S., and professionally  
11 accepted appraisal practices, including mass appraisal standards, if appropriate.  
12  
13

14 **Requirements for Overcoming a Presumption of Correctness**

15 If the property appraiser establishes a presumption of correctness, the petitioner can  
16 overcome the presumption of correctness by proving by a preponderance of the  
17 evidence one of the following:

- 18  
19 1. The property appraiser's just valuation does not represent just value; or  
20  
21 2. The property appraiser's just valuation is arbitrarily based on appraisal practices that  
22 are different from the appraisal practices generally applied by the property appraiser  
23 to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as  
24 amended by Chapter 2009-121, Laws of Florida (House Bill 521).  
25

26 If the property appraiser establishes a presumption of correctness and the petitioner  
27 does not overcome the presumption of correctness as described above, the  
28 assessment stands.  
29  
30

31 **Establishing a Revised Just Value or Remanding the Assessment**

32 If the property appraiser does not establish a presumption of correctness for the  
33 assessment, or if the petitioner overcomes the presumption of correctness, the Board or  
34 special magistrate must take one of the two following actions:  
35

- 36 1. If the record contains competent substantial evidence of just value that cumulatively  
37 meets the requirements of Section 193.011, F.S., and professionally accepted  
38 appraisal practices, the Board or special magistrate must establish a revised just  
39 value; or  
40

- 1 2. If the record lacks such competent substantial evidence, the Board or special  
2 magistrate must remand the assessment to the property appraiser with appropriate  
3 directions with which the property appraiser must comply.  
4

5 NOTE: Information on the procedural requirements for remanded assessments is  
6 presented in Module 5 of this training.  
7  
8

### 9 **Competent Substantial Evidence for Establishing a Revised Just** 10 **Value**

11 Competent substantial evidence for establishing a revised just value, as part of an  
12 administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:  
13

- 14 1. Cumulatively meets the criteria of Section 193.011, F.S., and professionally  
15 accepted appraisal practices;  
16  
17 2. Tends to prove (is probative of) just value as of January 1 of the assessment year  
18 under review;  
19  
20 3. Is sufficiently relevant and credible to be accepted as adequate to support (legally  
21 justify) the conclusion reached; and  
22  
23 4. Otherwise meets all requirements of law.  
24  
25

### 26 **Establishment of Revised Just Values in Administrative Reviews**

27 The Board or special magistrate is required to establish a revised just value under either  
28 of the two following conditions:  
29

- 30 1. The property appraiser does not establish a presumption of correctness for the  
31 assessment and the hearing record contains competent substantial evidence for  
32 establishing a revised just value as described above; or  
33  
34 2. The petitioner overcomes a presumption of correctness established by the property  
35 appraiser and the hearing record contains competent substantial evidence for  
36 establishing a revised just value as described above.  
37

38 Within their scope of authority, the Board or special magistrate shall establish a revised  
39 just value based upon the competent substantial evidence for establishing a revised just  
40 value. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House  
41 Bill 521).  
42

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1 Prior to 2009 and the adoption of House Bill 521, Section 194.301, F.S., provided that  
2 the Board may establish the assessment when authorized.

3  
4 However, the current statute, effective for administrative reviews beginning in 2009,  
5 specifically requires that the Board shall establish the just value when authorized by  
6 law. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill  
7 521).

8  
9 *“In establishing a revised just value, the board or special magistrate is not restricted to  
10 any specific value offered by one of the parties.”* See Rule 12D-9.027(2)(b)3.a., F.A.C.

11  
12 In establishing a revised just value when required by law, Boards and special  
13 magistrates are not required, and are not authorized, to complete an independent  
14 valuation approach.

15  
16 The establishment of a revised just value does not require the evidence necessary to  
17 complete an independent valuation approach.

18  
19 The establishment of a revised just value only requires enough evidence to legally  
20 justify making an adjustment to the property appraiser’s original just valuation.

21  
22 In establishing a revised just value when required by law, Boards and special  
23 magistrates are authorized to make the necessary calculations.

### 24 25 26 **Sequence of General Procedural Steps**

27 This section sets forth below a sequence of general procedural steps for Boards and  
28 special magistrates to follow in administrative reviews of just valuations in order to fulfill  
29 the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.

30  
31 This sequence of steps applies to: the consideration of evidence, the development of  
32 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

33  
34 *“The board or special magistrate shall not be required to make, at any time during a  
35 hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See  
36 Rule 12D-9.025(9), F.A.C.

37  
38 *“The board or special magistrate has the discretion to determine whether to make such  
39 determinations during a hearing or to consider the petition and evidence further after the  
40 hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.

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1 In following this sequence of steps, Boards or special magistrates must also meet the  
2 requirements of Rule 12D-9.025(1), F.A.C., which are the following:

- 3
- 4 \* Review the evidence presented by the parties;
- 5
- 6 \* Determine whether the evidence presented is admissible;
- 7
- 8 \* Admit the evidence that is admissible; and
- 9
- 10 \* Identify the evidence presented to indicate that it is admitted or not admitted.

11  
12 The sequence of general procedural steps presented below is based on Rule 12D-  
13 9.027(2), F.A.C. The sequence of general procedural steps is as follows.

- 14
- 15 1. Consider the admitted evidence presented by the parties.
- 16
- 17 2. Identify and consider the essential characteristics of the petitioned property based on  
18 the admitted evidence and the factors in Section 193.011, F.S.
- 19
- 20 3. Identify the appraisal methodology used by the property appraiser in developing his  
21 or her just valuation of the petitioned property, and consider this appraisal  
22 methodology in light of the essential characteristics of the petitioned property.
- 23
- 24 4. Determine whether the admitted evidence proves by a preponderance of the  
25 evidence that the property appraiser's methodology complies with Section 193.011,  
26 F.S., and professionally accepted appraisal practices, including mass appraisal  
27 standards, if appropriate.
- 28
- 29 5. Determine whether the property appraiser's appraisal methodology is appropriate  
30 and whether the property appraiser established a presumption of correctness for the  
31 assessment.
- 32
- 33 a) The property appraiser's just valuation methodology is not appropriate and a  
34 presumption of correctness is not established unless the admitted evidence  
35 proves by a preponderance of the evidence that the property appraiser's just  
36 valuation methodology complies with Section 193.011, F.S., and professionally  
37 accepted appraisal practices, including mass appraisal standards, if appropriate.
- 38
- 39 b) The property appraiser's just valuation methodology is appropriate and the  
40 presumption of correctness is established only when the admitted evidence  
41 proves by a preponderance of the evidence that the property appraiser's just

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1 valuation methodology complies with Section 193.011, F.S., and professionally  
2 accepted appraisal practices, including mass appraisal standards, if appropriate.

- 3  
4 6. If the Board or special magistrate determines that a presumption of correctness is  
5 established, the Board or special magistrate must then determine whether the  
6 admitted evidence proves by a preponderance of the evidence that:  
7  
8 a) The property appraiser's just valuation does not represent just value; or  
9  
10 b) The property appraiser's just valuation is arbitrarily based on appraisal practices  
11 that are different from the appraisal practices generally applied by the property  
12 appraiser to comparable property within the same county. In making this  
13 determination, the Board or special magistrate may consider any admitted  
14 evidence regarding assessments among comparable properties within  
15 homogeneous areas or neighborhoods.  
16  
17 7. If the Board or special magistrate determines that one or both of the conditions  
18 specified under Step 6 exist, the presumption of correctness is overcome.  
19  
20 8. If the property appraiser does not establish a presumption of correctness, or if the  
21 presumption of correctness is overcome, the Board or special magistrate must  
22 determine whether the hearing record contains competent, substantial evidence of  
23 just value which cumulatively meets the criteria of Section 193.011, F.S., and  
24 professionally accepted appraisal practices.  
25  
26 a) If the hearing record contains competent, substantial evidence for establishing a  
27 revised just value, the Board or an appraiser special magistrate must establish a  
28 revised just value based only upon such evidence. In establishing a revised just  
29 value, the Board or special magistrate is not restricted to any specific value  
30 offered by one of the parties.  
31  
32 b) If the hearing record lacks competent, substantial evidence for establishing a  
33 revised just value, the Board or special magistrate must remand the assessment  
34 to the property appraiser with appropriate directions for establishing just value.  
35 The property appraiser is required to follow these directions.  
36  
37 9. If the property appraiser establishes a presumption of correctness as described in  
38 Step 5 above and that presumption of correctness is not overcome as described in  
39 Step 6 above, the assessment stands.  
40  
41

1 **Cost of Sale Deductions Are a Professionally Accepted Appraisal**  
2 **Practice**

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

5  
6 Florida's constitution has "delegated to the Legislature the responsibility for deciding the  
7 specifics of how that 'just valuation' would be secured." Sunset Harbour Condominium  
8 Ass'n v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Collier County v. State, 733 So.2d  
9 1012, 1019 (Fla. 1999).

10  
11 After 2009 legislation, each of the parts of sections 193.011, 194.301, and 194.3015,  
12 F.S., must now be interpreted and applied together so that each part is given  
13 appropriate meaning.

14  
15 Regarding what is now section 193.011, F.S., in 1963 the Legislature enacted the initial  
16 version of the first seven just valuation factors, effective January 1, 1964. See Chapter  
17 63-250, Laws of Florida, creating Section 193.021, F.S., which was re-numbered in 1969 as  
18 Section 193.011, F.S., by Chapter 69-55, Laws of Florida.

19  
20 In 1967, the Florida Legislature added the eighth just valuation factor providing for  
21 property appraisers to deduct costs of sale in arriving at just valuations for ad valorem  
22 tax purposes. See Chapter 67-167, section 1, Laws of Florida (creating subsection 193.021(8),  
23 F.S., re-numbered in 1969 as subsection 193.011(8), F.S.).

24  
25 • The rule of statutory interpretation is to assume that the Legislature intended its  
26 amendment to serve a useful purpose. "Likewise, when a statute is amended, it is  
27 presumed that the Legislature intended it to have a meaning different from that  
28 accorded to it before the amendment." Carlile v. Game and Freshwater Fish  
29 Commission, 354 So.2d 362 (Fla. 1977); see also Okeechobee Health Care v. Collins, 726  
30 So.2d 775 (Fla. 1st DCA 1998).

31  
32 • For many years, Florida property appraisers have applied section 193.011(8), F.S.,  
33 by making across-the-board, cost of sale deductions in arriving at just valuations of  
34 real property.

35  
36 Section 193.011(8), F.S., generally referred to as the "cost of sale" factor or the "net  
37 proceeds of sale" factor, was last amended in 1978 and now states in its entirety:

38  
39 "The net proceeds of the sale of the property, as received by the seller, after deduction  
40 of all of the usual and reasonable fees and costs of the sale, including the costs and  
41 expenses of financing, and allowance for unconventional or atypical terms of financing  
42 arrangements. When the net proceeds of the sale of any property are utilized, directly or

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1 indirectly, in the determination of just valuation of realty of the sold parcel or any other  
2 parcel under the provisions of this section, the property appraiser, for the purposes of  
3 such determination, shall exclude any portion of such net proceeds attributable to  
4 payments for household furnishings or other items of personal property.”  
5

6 • In this statute, the term “net proceeds” denotes a lower amount in dollars remaining  
7 after the mathematical operation of subtracting the “usual and reasonable fees and  
8 costs of the sale” (generally called “costs of sale”) from a higher starting number also  
9 expressed in dollars but which in practice is also expressed as a percentage of the  
10 higher starting number.

11  
12 • In this statute, the term “after deduction” likewise denotes the mathematical  
13 operation of subtracting costs of sale.  
14

15 While section 193.011(8), F.S., mentions three possible elements to be deducted, for  
16 the following reasons the deduction is generally considered to be for the “usual and  
17 reasonable fees and costs of the sale.” For the reasons described below, neither of the  
18 other two possible elements have general applicability.  
19

20 • First, the statute mentions an “allowance for unconventional or atypical terms of  
21 finance arrangements...” However, by definition, such allowance would be an  
22 infrequent occurrence and, accordingly, would not be part of the across-the-board,  
23 cost of sale deductions applied by property appraisers to all property.  
24

25 • Second, the statute provides that “When the net proceeds of the sale are utilized...”  
26 the property appraiser “shall exclude any portion of such net proceeds  
27 attributable...” to personal property.  
28

29 • Given that costs of sale have already been deducted to arrive at net proceeds before  
30 net proceeds can be utilized, any further deduction for personal property would be,  
31 under the statute’s plain language and logic, separate and apart from the cost of  
32 sale deduction.  
33

34 • The recorded selling prices for real property, used in the just valuation process for  
35 ad valorem tax purposes, are based on the amount reported for the documentary  
36 stamp tax on real property transfer instruments (such as deeds), and personal  
37 property is not subject to the documentary stamp tax.  
38

39 • Accordingly, there is no reason to believe that recorded selling prices generally  
40 include any transfer amount for personal property since only real property  
41 transfers are subject to the documentary stamp tax.  
42

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- 1 • For the limited situations where an appraisal method for certain property types  
2 involves significant tangible personal property, the professionally accepted practice  
3 is to deduct the tangible property value separately from the cost of sale deductions.  
4
- 5 • The existence of tangible personal property value in appraisal situations is  
6 proven when the property appraiser maintains a separate account for tangible  
7 personal property that corresponds with the real property parcel involved.  
8

### **The Net Proceeds of Sale Factor is Unique Among the Eight Factors**

9 Applying the net proceeds of sale factor (after deducting costs of sale) is different from  
10 applying the other seven factors in section 193.011, F.S.  
11

- 12
- 13 • This is because property appraisers generally apply the other seven factors through  
14 their annual appraisal process that includes much work to collect, analyze, and apply  
15 property-specific appraisal data related to the other factors (such as property use,  
16 size, condition, etc.), as applicable.  
17
- 18 • However, as described below in this module, given the general lack of provably  
19 reliable market data to demonstrate the typical, prevalent, and representative cost of  
20 sale deductions for the different classes of property, the standard of care for cost of  
21 sale deductions is for property appraisers to simply select a cost of sale deduction of  
22 15 percent or less and apply it uniformly within the different classes of real property.  
23
- 24 • The general lack of market data for costs of sale adversely affects the reliability  
25 of any attempts to support specific cost of sale deductions, because the general  
26 lack impedes the verification of a specific cost of sale amount by comparing the  
27 amount to other such amounts (which are generally not available).  
28
- 29 • Therefore, given this general lack of market data necessary for proving specific  
30 cost of sale deductions for the different classes of real property, VABs and  
31 magistrates should generally apply the cost of sale percentage the property  
32 appraiser reported on Form DR-493 to achieve the overriding goal of uniformity.  
33

34 When cost of sale deductions are lawfully made and clearly and accurately reported to  
35 DOR, taxpayers, and VABs, the property appraiser complies with applicable law  
36 including the statutory standard of professionally accepted appraisal practices.  
37

38 When the VAB makes findings of fact on the cost of sale deductions the property  
39 appraiser made and then reported on Form DR-493, and then uniformly applies the  
40 same percentage deductions where necessary for uniformity without double-counting,  
41 the VAB likewise complies with law including the standard of professionally accepted  
42 appraisal practices.

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### Cost of Sale Deductions Have Been an Accepted Practice in Florida for Decades

For the 1980 tax year, the across-the-board practice of deducting costs of sale in arriving at just valuations under section 193.011(8) was well-documented in a stipulation of facts that was part of federal litigation involving relative levels of assessment of commercial and industrial property in Florida.

- In that litigation, a federal trial court granted summary judgment based on the stipulation of facts, which showed cost of sale deductions made by both property appraisers and DOR, for commercial and industrial property, ranging from 13 to 21 percent with the majority of counties showing about 14 to 15 percent for cost of sale deductions for the 1980 tax year.
- The trial court judgment was appealed and then upheld by a U.S. Court of Appeals in Louisville and Nashville Railroad Co. v. Department of Revenue, State of Fla., 736 F.2d 1495 (11th Cir.1984).

In 1982, the Florida Legislature enacted a requirement for property appraisers to annually report to DOR the cost of sale deductions the property appraiser “made to recorded selling prices or fair market value in arriving at assessed value, as prescribed by department rule;” See Chapter 82-388, section 12, Laws of Florida (creating subsection (18) of section 192.001, F.S.).

Then, effective September 30, 1982, DOR implemented this reporting requirement by adopting Rule 12D-8.002(4), F.A.C., which states as follows in pertinent part, unchanged since adoption:

“Accompanying the assessment roll submitted to the Executive Director shall be, on a form provided by the Department, an accurate tabular summary by property class of any adjustments made to recorded selling prices or fair market value in arriving at assessed value. Complete, clear, and accurate documentation for each adjustment under Section 193.011(8), F.S., exceeding fifteen percent shall accompany this summary detailing how that percentage adjustment was calculated. This documentation shall include individual data for all sales used and a narrative on the procedures used in the study.”

- This rule provides a reporting threshold of 15 percent, where property appraisers would have to conduct extensive research and analysis and provide extensive market data and documentation to justify any reported cost of sale deduction that exceeds 15 percent.
- This reporting threshold was implemented in 1982 to address a very difficult situation where both property appraisers and DOR had annually spent inordinate time and

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1 effort in futile attempts to research and reliably identify the usual (typical), prevalent,  
2 and representative costs of sale for each class of property.

- 3
- 4 • There is no law requiring disclosure of these costs of sale and, consequently, the  
5 task of conducting market research to reliably support the deductions for each of the  
6 classes of real property proved to be ineffective and unworkable.
- 7
- 8 • The reporting threshold rule provide a reasonable solution enabling uniform  
9 application of the net proceeds of sale factor (after deducting costs of sale).
- 10
- 11 • The professionally accepted appraisal practice is for property appraisers to uniformly  
12 make cost of sale deductions of 15 percent or less for all property within use code  
13 groups and then report these deductions on Form DR-493 while, understandably,  
14 avoiding the impracticable task of attempting to support the deductions in the  
15 absence of sufficiently reliable market data that demonstrates the typical, prevalent,  
16 and representative cost of sale deductions for each class of real property.
- 17
- 18 • This widely accepted, across-the-board practice has been the norm for decades and  
19 reflects the professionally accepted standard of care for making cost of sale  
20 deductions under section 193.011(8), F.S.
- 21
- 22 • DOR accepts these cost of sale deductions with the understanding and belief that  
23 the property appraiser has made these deductions uniformly to each parcel within  
24 the property groups listed on Form DR-493.

25

26 To facilitate annual reporting of cost of sale deductions in accordance with section  
27 192.001(18), F.S., and Rule 12D-8.002(4), F.A.C., DOR adopted Form DR-493 for  
28 property appraisers to use.

- 29
- 30 • Each year, using Form DR-493, property appraisers are required to report to DOR  
31 the cost of sale deductions the property appraiser made to recorded selling prices or  
32 fair market value for each parcel within each of the real property use code groups  
33 listed on the form.
- 34
- 35 • The Form DR-493 that each property appraiser annually completed and reported are  
36 available by clicking on “Assessment Roll Evaluation and Approval” at:  
37 <http://floridarevenue.com/property/Pages/DataPortal.aspx>

38

39 To view statewide summaries of the cost of sale deductions reported by each county for  
40 the past three years, [click here](#).

41

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- These statewide summaries show compelling evidence of a professionally accepted appraisal practice under Florida ad valorem property tax law.

### **Case Law Recognizing Cost of Sale Deductions Under Florida Statutes**

In 1984, in Louisville and Nashville Railroad Co. v. Department of Revenue, State of Fla., 736 F.2d 1495 (11th Cir.1984), a U.S. Court of Appeals recognized Florida's statewide practice of cost of sale deductions under section 193.011(8), F.S., and held that, to avoid disparate treatment, such deductions must be applied uniformly using a single standard.

In 1985, in Roden v. GAC Liquidating Trust, 462 So. 2d 92 (Fla. 2nd DCA 1985), the court upheld the property appraiser's just valuation under section 193.011, F.S., and stated in pertinent part as follows:

*"The property appraiser presented Edwin Coleman as his witness. Coleman is the supervisor of the Real Estate Department of the Polk County Property Appraiser's Office. Coleman testified that there have been thousands of parcels sold at River Ranch Acres for prices ranging from \$300 to \$2,500 per acre. He said that recent sales to in-state owners show a price of around \$960 per acre from which was deducted realtor's fees and costs of sale, reducing the figure to \$816 per acre. Coleman confirmed that the assessment value of \$800 per acre was based on these sales, which he viewed as comparable."*

- Regarding the property appraiser's calculations approved by the Roden court, the difference between \$960 per acre and \$816 per acre shows a cost-of-sale deduction of \$144 per acre which, when divided by the starting number of \$960 per acre, reveals a 15 percent cost of sale deduction approved by the court.

In 1988, in Oyster Pointe Condo. Assoc., Inc. v. Nolte, 524 So. 2d 415, 418 (Fla. 1988), the Florida Supreme Court, in holding that timeshare marketing costs were not (under timeshare statutes at that time) part of the "reasonable fees and costs of sale" under section 193.011(8), held as follows:

*"However, as we read section 193.011(8), these costs are not among the "reasonable fees and costs of sale" contemplated by the legislature to be excluded from the ad valorem appraisal process."*

- This holding is compelling because it is consistent with the long-standing professionally accepted appraisal practice of deducting costs of sale across-the-board, and it shows the Florida Supreme Court's recognition of the legislative intent for the costs of sale "to be excluded from the ad valorem appraisal process" without exception.

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- This court's use of the term "excluded from" confirms the mathematical operation of subtracting costs of sale in arriving at just value under section 193.011, F.S.

In 1995, in Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So. 2d 272, 275 (Fla. 4th DCA 1995) rev. den. 673 So. 2d 30 (Fla. 1996), the Fourth District stated as follows, approving a 15 percent deduction for costs of sale:

"Next we turn to Southern Bell's contesting of the effect of the 15% cost of sale, or "eighth criterion,"[2] adjustment made by the Department to all of the selling prices in its sales assessment ratio study, and to all of the market values in its in-depth study. We find this 15% to be a figure the Department of Revenue recognizes and accepts without further evidence, through custom and usage. Pursuant to D.O.R. v. Markham, 426 So.2d 555 (Fla. 4th DCA 1982), fair market value equals just value. For example: assume a piece of property to be sold has a selling price of \$100,000. The Department would attribute 15% of the selling price as the cost of sale (i.e. brokerage commissions, advertising, etc.). 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."

- In the preceding excerpt, the court's term "custom and usage" further shows that cost of sale deductions are a professionally accepted appraisal practice under Florida ad valorem property tax law.
- This decision also shows that adjectives preceding the term "value" in a particular situation are not determinative of whether an applied appraisal practice (such as a cost of sale deduction) is legally acceptable in arriving at just value.

In 2020, in Crapo v. Fla. Dept. of Rev., 298 So. 3d 1131 (Fla. 1st DCA July 14, 2020) (per curiam affirmed), the First District of Court of Appeal upheld, in all respects, DOR's probable cause review of certain VAB decisions, in some of which the VAB made cost of sale deductions where appropriate in revising just value assessments.

- In its probable cause review, DOR found that the VAB, in making these cost of sale deductions, did not err because the VAB's actions were consistent with standards in section 194.301, F.S., including professionally accepted appraisal practices.
- At oral argument, the issue of cost of sale deductions being a professionally accepted appraisal practice was specifically argued by both of the opposing sides before the court ruled in DOR's favor.

1 **Just Valuation Reporting on Cost of Sale Deductions**

2 An example of an actual reported practice of making across-the-board, cost of sale  
3 deductions is contained in the Hillsborough County property appraiser's 2010 Mass  
4 Appraisal Report (authored by Tim Wilmath, MAI, Director of Valuation, at that time).

- 5
- 6 • This 2010 Mass Appraisal Report was presented as evidence at Board hearings.
- 7
- 8 • Below are excerpts from this report explaining how across-the-board, cost of sale  
9 deductions are made to all property without regard to whether a property was sold  
10 and without regard to which valuation approach or technique was used.
- 11

12 "The property appraiser considers the 8th criterion by adjusting all sale prices  
13 downward by 15% to reflect costs of sale. This downward adjustment is made before  
14 the sales are used to value the population of properties."

15

16 "Each year, the property appraiser's office submits Form DR-493 to the Department  
17 of Revenue, indicating the costs of sale adjustments that were made to sale prices.  
18 As indicated below, the Hillsborough County Property Appraiser's office adjusts  
19 recorded sale prices by 15% in arriving at assessed values."

20

21 "In the cost/market hybrid approach, the costs of sale adjustment is applied by  
22 deducting 15% from sale prices before calculating the appropriate base rate. For  
23 example, after deducting land value and extra feature value, the contributory value  
24 of an average quality single family home based on 4th quarter sales, is \$54.50 per  
25 square foot. Deducting 15% results in a base rate for single family homes of \$46.00  
26 per square foot (rounded). This same exercise is conducted for every property type.  
27 Once all base rate adjustments have been made, a review of sales ratios is  
28 conducted to ensure the assessments are at or below 85% of sale prices."

29

30 "A more common approach to deducting the 15% costs of sale, is to apply rates and  
31 factors that achieve an assessment ratio of 85% or less. By ensuring that  
32 assessments are at or below 85% of sales prices, the 15% costs of sale adjustment  
33 is effectively factored into assessments. When there are no sales of a given property  
34 type for a given tax year, the rates extracted from Marshall Valuation Service are  
35 adjusted to reflect the 15% costs of sale. For all property types, whether sales exist  
36 or not, rates are adjusted to reflect the 15% costs of sale."

37

38 "For land valuation, the goal is a land assessment to vacant sale ratio of 85% or  
39 less. When few or even no vacant land sales exist, ratios are reviewed to ensure the  
40 estimated land value for any given neighborhood results in an improved  
41 assessment-to-sale ratio of 85% or less."

42

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1 *“In the sales comparison approach, sale prices are adjusted by 15% before*  
2 *adjustments for various factors are applied. This adjustment is evident in the screen*  
3 *shot below.”*

4  
5 *“The income models created by our office are designed to arrive at values that are*  
6 *approximately 85% or less of gross sale prices of similar properties.”*

7  
8 *“For all property types, the property appraiser strives to achieve assessed values*  
9 *that are at or below 15% of the prior year's selling prices. This is evident in the graph*  
10 *below that illustrates the difference between assessments and selling prices over the*  
11 *past 6 years.”*

12  
13 In another example of an actual reported practice, a document produced in 2011 by the  
14 Palm Beach County property appraiser contains the following description of how that  
15 office applies across-the-board, cost of sale deductions in all three approaches to just  
16 valuation of all real property, without regard to whether the property was sold.

17  
18 *“In the Office of the Palm Beach County Property Appraiser, all recorded sales of*  
19 *real property are reduced by 15% to reflect the seller's typical “costs of sale.” Thus,*  
20 *only 85% of the recorded sales price is recognized by the Property Appraiser. This*  
21 *adjusted sales prices (reflecting the seller's “net proceeds”) are then entered into the*  
22 *Property Appraiser's Computer Assisted Mass Appraisal (CAMA) program, along*  
23 *with other data pertaining to the remaining seven statutory criteria enumerated in*  
24 *section 193.011, Florida Statutes. From this mass compilation of data involving*  
25 *thousands of entries, the Property Appraiser's computer system generates a market*  
26 *value assessment for the particular kind of property. This is how value indications of*  
27 *real property are developed. The CAMA system, therefore, determines a real*  
28 *property assessment which is based upon the consideration and use, where*  
29 *appropriate, of all eight factors and complies with the requirements of §193.011.”*

30  
31 *“The CAMA-generated assessment is neither a sales comparison approach to*  
32 *determining value nor an income capitalization approach to value nor a cost less*  
33 *depreciation approach to value. Rather, it is a hybrid of all three appraisal methods*  
34 *in which the eighth criteria is properly considered and used when deriving just*  
35 *value.”*

36  
37 Going forward, property appraisers can further the VAB's across-the-board uniformity in  
38 handling cost of sale deductions by transparently labeling and showing the specific  
39 mathematical calculations actually applied in deducting costs of sale in each of the three  
40 appraisal approaches.

41

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- 1 • The second sentence in the Preamble to the Uniform Standards of Professional  
2 Appraisal Practice, states: “It is essential that appraisers develop and communicate  
3 their analyses, opinions, and conclusions to intended users of their services in a  
4 manner that is meaningful and not misleading.”  
5
- 6 • Further, USPAP’s Advisory Opinion 32 states in pertinent part: “Therefore, if an  
7 appraiser communicates mass appraisal or assignment results for a single property,  
8 the communication must be meaningful and must not be misleading.”  
9
- 10 • In the context of reporting cost of sale deductions, non-specific narrative is not  
11 meaningful and does not further accuracy or uniformity in VAB decisions.  
12  
13

### **Uniformity is Paramount in Cost of Sale Deductions In VAB Petitions**

14 Section 195.0012, F.S., states in its entirety:

15  
16  
17 “Legislative intent.—It is declared to be the legislative purpose and intent in this entire  
18 chapter to recognize and fulfill the state’s responsibility to secure a just valuation for ad  
19 valorem tax purposes of all property and to provide for a uniform assessment as  
20 between property within each county and property in every other county or taxing  
21 district.”  
22

23 The Legislature’s enactments for just valuations must be applied to all property. See  
24 Sunset Harbour Condominium Ass’n v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing  
25 Interlachen Lakes Estates, Inc. v. Snyder, 304 So. 2d 433, 434 (Fla. 1973).  
26

27 The orderly and uniform application of state law is an important public policy. See  
28 Crossings at Fleming Island v. Echeverri, 991 So. 2d 793, 797 (Fla. 2008).  
29

30 Within the context and scope of their respective duties, property appraisers, value  
31 adjustment boards, and courts must follow the same legal standards. See Countryside  
32 Country Club, Inc. v. Smith, 573 So. 2d 14, 15-16 (Fla. 2nd DCA 1990).  
33

34 • Also, see Rule 12D-10.003(1), F.A.C., stating regarding the VAB, “...the board is  
35 bound by the same standards as the county property appraiser in determining  
36 values...”  
37

38 • This “same standard” requirement is also reflected in section 194.301, F.S.  
39

40 Notably, in Oyster Pointe Condo. Assoc., Inc. v. Nolte, 524 So. 2d 415, 418 (Fla. 1988),  
41 the Florida Supreme Court, in holding that timeshare marketing costs were not (under

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1 timeshare statutes at that time) part of the “reasonable fees and costs of sale” under  
2 section 193.011(8), held as follows:

3  
4 “However, as we read section 193.011(8), these costs are not among the “reasonable  
5 fees and costs of sale” contemplated by the legislature to be excluded from the ad  
6 valorem appraisal process.”

- 7  
8 • This holding is compelling because it is consistent with long-standing, undeniable,  
9 mathematical facts and it shows the Florida Supreme Court’s recognition of the  
10 legislative intent for the costs of sale “to be excluded from the ad valorem appraisal  
11 process” without exception.  
12  
13 • This holding requires uniform cost of sale deductions, without regard to whether the  
14 property was sold or to the method or approach used to value the property.

15  
16 Further, a failure to uniformly apply the “net proceeds” of sale factor, to both sold and  
17 unsold parcels, would be selective reappraisal.

18  
19 The text titled *Mass Appraisal of Real Property*, published in 1999 by the International  
20 Association of Assessing Officers, page 315, describes the highly undesirable practice  
21 of selective reappraisal as follows:

22  
23 “The reliability of sales ratio statistics depends on unsold parcels being appraised in the  
24 same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio  
25 results, possibly rendering them useless. Equally important, selective reappraisal of  
26 sold parcels (“sales chasing”) is a serious violation of basic appraisal uniformity and is  
27 highly unprofessional.”

28  
29 Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See  
30 *Allegheny Pittsburgh Coal Co. v. County Commissioner*, 488 U.S. 336 (1989).

31  
32 Applicable law provides for uniform cost of sale deductions in just valuations, without  
33 regard to:

- 34  
35 (1) whether the property was sold,  
36 (2) whether mass appraisal or single-property appraisal is used,  
37 (3) the appraisal approach used to value the property,  
38 (4) whether the petitioner is seeking an increase or decrease in just value  
39 (5) whether appraisal development or VAB review is involved.

40  
41 Under applicable law, there is no legal authority for variation in application of cost of  
42 sale deductions based on any of the preceding five items, and VABs and special

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1 magistrates are strongly advised to avoid using any of these five items in deciding when  
2 and how to apply cost of sale deductions in administrative reviews.

### 3 4 **Cost of Sale Deductions Must be Applied Uniformly Using a Single Standard**

5 Regarding the uniform application of the net proceeds of sale factor, section 193.011(8),  
6 F.S., provides in pertinent part:

7  
8 “When the net proceeds of the sale of any property are utilized, directly or indirectly, in  
9 the determination of just valuation of realty of the sold parcel or any other parcel under  
10 the provisions of this section...”

11  
12 The term “sold parcel or any other parcel” encompasses all parcels and means the net  
13 proceeds of sale factor is to be applied in the just valuation of all property, not just  
14 property that was sold or some other subset.

15  
16 Further, the U.S. Supreme Court has also emphasized that “the uniformity and equality  
17 required by law” is of paramount concern in property assessment valuations. See Sioux  
18 City Bridge Co. v. Dakota County, Nebraska, 260 U.S. 441, 446–47 (1923) (cited by the  
19 Florida Supreme Court in Southern Bell Telephone Co. v. Dade County, 275 So. 2d 4, 8  
20 (Fla. 1973).

21  
22 Additionally, in Louisville and Nashville Railroad Co. v. Department of Revenue, State of  
23 Fla., 736 F.2d 1495 (11th Cir.1984), a U.S. Court of Appeals addressed disparate  
24 treatment among comparable property in applying the cost of sale deduction and held  
25 that when comparing valuation practices under review to valuation practices for other  
26 comparable property, the overriding consideration is to apply a single standard for both  
27 groups.

- 28  
29
  - Notably, this holding was specifically based on the net proceeds of sale factor (after  
30 deducting costs of sale) in section 193.011(8), F.S.

31  
32 The determinative standard enacted in 2009 in section 194.301(2)(a)3., F.S., precludes  
33 a property appraiser’s just valuations from being “arbitrarily based on appraisal  
34 practices that are different from the appraisal practices generally applied by the property  
35 appraiser to comparable property within the same county.”

- 36  
37
  - This statutory standard is clearly aimed at preventing disparate treatment by the  
38 property appraiser, like the holdings in the federal cases described above.

39  
40 As explained above, the overriding consideration in handling cost of sale deductions is  
41 to apply them uniformly using a single standard.

42

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1 Below is some useful information to assist the VAB and special magistrates with  
2 achieving uniformity (without double-counting) in handling cost of sale deductions.

### Findings of Fact on Cost of Sale Deductions in Written VAB Decisions

4 In making written findings of fact, the VAB and special magistrates must specifically  
5 address how cost of sale deductions were handled in the evidence presented and in  
6 any analyses used by the VAB and magistrates in reviewing or revising a just value  
7 assessment.

- 10 • The written findings of fact must clearly state for readers the results of reviewing the  
11 evidence (or lack thereof) regarding cost of sale deductions.
- 13 • The written findings of fact must clearly state for readers the reasons why the VAB  
14 or magistrate made, or did not make, a cost of sale deduction within each appraisal  
15 data set, analysis, or approach presented as evidence within the three categories of  
16 evidence described below.

### Cost of Sale Deductions in Each of the Three Valuation Approaches

18 In reviewing and applying just valuation evidence and making written findings of fact,  
19 the VAB or special magistrate must specifically apply (without double-counting)  
20 mathematically correct cost of sale deductions in each of the three professionally  
21 accepted valuation approaches (and any variants thereof) for which evidence may be  
22 presented.

24 These three approaches are:

- 27 (1) the Sales Comparison Approach,
- 29 (2) the Cost Less Depreciation Approach, and
- 31 (3) the Income Capitalization Approach.

32 Cost of sale deductions in the three approaches can best be accomplished by the  
33 transparent mathematical subtraction procedure specified in section 193.011(8), F.S.,  
34 but can also be done by applying an equivalent decimal multiplier that equals (one  
35 minus the cost of sale decimal).

- 38 • However, cost of sale deductions in the income capitalization approach can be more  
39 complex and more prone to error. For more information, [click here](#) to see a 2022  
40 advisory memo on cost of sale deductions in the income capitalization approach.

### Cost of Sale Deductions in Each of the Three Categories of Just Value Evidence

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1 To achieve uniformity and consistency in administrative reviews, the VAB's findings of  
2 fact should specifically address cost of sale deductions in each of the three general  
3 categories of evidence in VAB reviews of just value assessments.

4  
5 • These three general categories are:

- 6  
7 • evidence presented by the property appraiser to show the methodology used in  
8 making the just value assessment presented by the property appraiser at the  
9 beginning of the hearing.
- 10  
11 • comparative evidence presented by the property appraiser to support the  
12 presented just value and that was assembled in connection with the petition; and  
13
- 14 • evidence presented by the petitioner to support the petition.

15  
16 First, the VAB or special magistrate should make a finding of fact on the cost of sale  
17 percentage applied in the first category, based on the subject DR-493 in evidence or  
18 other notice of the DR-493 percentage as a professionally accepted appraisal practice.  
19

20 Then, for each valuation data set, analysis, or approach in the second and third  
21 categories, the VAB or special magistrate should make a finding of fact on whether the  
22 data set, analysis, or approach already shows a cost of sale deduction.  
23

- 24 • For each such data set, analysis, or approach where a cost of sale deduction equal  
25 to the DR-493 deduction has already been made, the VAB or magistrate must avoid  
26 making a second deduction within that particular data set, analysis, or approach.  
27
- 28 • For each data set, analysis, or approach where a cost of sale deduction equal to the  
29 DR-493 deduction has not been made, the VAB or magistrate must make and  
30 clearly show the appropriate cost of sale deduction for each such data set, analysis,  
31 or approach if relying upon it in the review.  
32

### **The Appropriate Standard for Reviewing Evidence Intended to Show a Cost of Sale Deduction Different From the Deduction Reported on Form DR-493**

33 Given the lack of reliable data and other unique realities of the cost of sale factor as  
34 described previously in this module, in any case where a petitioner presents evidence  
35 intended to show a cost of sale deduction different from the deduction the property  
36 appraiser reported on Form DR-493, the VAB and special magistrates should:  
37

- 38 • Consider the general lack of demonstrably reliable market data to prove typical,  
39 prevalent, and representative cost of sale deductions for the different property  
40 categories.  
41

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1 classes and the resulting adverse impact on the reliability and representativeness of  
2 any evidence presented in support of a non-493 cost of sale deduction.

- 3
- 4 • Consider that the professionally accepted appraisal practice used in developing the  
5 just value assessment is to select the cost of sale percentage shown on Form DR-  
6 493 and then apply it uniformly to all property within the subject use code group on  
7 the DR-493, and that the VAB and special magistrate is required to follow  
8 professionally accepted appraisal practices as well.
- 9
- 10 • Determine whether the presented evidence is sufficiently reliable to prove that the  
11 non-493 deduction is typical, prevalent, and representative of all property within the  
12 same class.
- 13
- 14 • To be sufficiently reliable, evidence must demonstrate that the non-493 deduction is  
15 typical, prevalent, and representative of all property within the subject class of  
16 property.
- 17
- 18 • If the evidence is not sufficiently reliable to demonstrate that such non-493 deduction  
19 is typical, prevalent, and representative of all property within the subject class of  
20 property, the VAB and magistrates must not apply the non-493 deduction and must  
21 apply the cost of sale deduction reported by the property appraiser on Form DR-493.
- 22
- 23 • Before applying a non-493 deduction, the VAB and special magistrate must make  
24 written findings of fact that explain why and how the non-493 evidence is sufficiently  
25 reliable to demonstrate that the non-493 deduction is typical, prevalent, and  
26 representative for all property within the subject class of property.
- 27
- 28 • In defending against a non-493 deduction, the property appraiser could argue that  
29 the cost of sale deduction shown on the DR-493 is a professionally accepted  
30 appraisal practice that sets a standard which the VAB and special magistrates must  
31 follow for consistency with the overarching standard of uniformity.
- 32
- 33 • Presumably, the property appraiser would not present “evidence” intended to show a  
34 non-493 deduction for a petitioned property, since such “evidence” would:
  - 35
  - 36 • undermine the property appraiser’s attempt to establish a presumption of  
37 correctness under section 194.301(1), and
  - 38
  - 39 • would also serve as proof of the property appraiser attempting to show an  
40 appraisal practice for the petitioned property that is arbitrarily different from the  
41 appraisal practices applied by the property appraiser to other comparable  
42 property as shown on the property appraiser’s Form DR-493.

1  
2 **Cost of Sale Deductions in Petitions Seeking a Decrease or Increase in Just Value**

- 3 • A petitioner may seek either a decrease or an increase in the just value of the  
4 petitioned property.  
5  
6 • To achieve uniformity, the VAB and special magistrates must handle the cost of sale  
7 deductions using the same standards (including the cost of sale percentages  
8 reported on Form DR-493) and procedures regardless of whether the petitioner is  
9 seeking an increase or a decrease in the just value assessment.

10  
11 **Avoiding Erroneous Arguments and Procedures in Cost of Sale Deductions**

12 In petitions, the VAB and/or special magistrates may be confronted with erroneous  
13 arguments or advice that must be avoided in making findings of fact and in producing  
14 written decisions.

15  
16 Examples of such erroneous arguments are listed below.

- 17  
18 • the cost of sale deduction applies only to property that was sold (this is wrong)  
19  
20 • the cost of sale deduction applies only to property appraised by the sales  
21 comparison approach (this is wrong)  
22  
23 • the cost of sale deduction applies only to just values produced by a mass appraisal  
24 system (this is wrong)  
25  
26 • the cost of sale deduction applies only to groups of property in the aggregate to  
27 produce a statistical range and does not apply to any individual property (this is  
28 wrong)  
29  
30 • the cost of sale deduction applies only when the petitioner is seeking a decrease in  
31 just value (this is wrong)  
32  
33 • the cost of sale deduction applies only when the petitioner is seeking an increase in  
34 just value (this is wrong)  
35  
36 • the cost of sale deduction cannot be applied by the VAB because only the property  
37 appraiser can make the deduction (this is wrong)  
38  
39 • the cost of sale deduction is unconstitutional (this wrong because no court has ever  
40 ruled that the cost of sale deduction under section 193.011(8), F.S., is  
41 unconstitutional)  
42

1 Also, the VAB and special magistrates must avoid incorrect procedures and must use  
2 mathematically correct procedures in applying cost of sale deductions without double-  
3 counting. Such procedures were discussed previously in this module.  
4  
5

## 6 **Destruction Caused by Sudden and Unforeseen Collapse and** 7 **Abatements of Taxes Due to Catastrophic Events**

8 **Note:** Legislation enacted in 2022 amended section 194.032(1)(b), F.S., to allow a  
9 value adjustment board to hear appeals pertaining to a property appraiser's denial of tax  
10 abatements under section 197.3195, F.S., relating to destruction caused by a sudden  
11 and unforeseen collapse, and, starting in 2023, tax refunds under section 197.319, F.S.,  
12 relating to residential improvements rendered uninhabitable by a catastrophic event.  
13 Although section 194.032(1)(b), F.S., permits the value adjustment board to meet and  
14 hear denials of tax abatements from destruction caused by a sudden and unforeseen  
15 collapse based on the statutory criteria in section 197.3195, F.S., this statute requires  
16 the value adjustment board to enter a final decision that dismisses any petition filed  
17 concerning the value of the parcel for the year of destruction. Also, since section  
18 197.319, F.S., is not effective until January 1, 2023, the amendment permitting the  
19 value adjustment board to meet and hear petitions filed under that statute will not apply  
20 until the 2023 value adjustment board. The law specifies that section 197.319, F.S.,  
21 relating to refunds due from catastrophic events, does not apply to any parcel for which  
22 an abatement of taxes is provided under section 197.3195, F.S. due to a sudden and  
23 unforeseen collapse. See Chapter 2022-97, Section 4, Laws of Florida, (CS/HB 7071),  
24 effective May 6, 2022.  
25

26 This legislation created section 197.3195, F.S., to provide retroactive property tax relief  
27 to parcel owners affected by a sudden and unforeseen collapse of a multistory  
28 residential building with at least 50 dwelling units, applicable retroactively to January 1,  
29 2021.  
30

31 The bill requires value adjustment boards to dismiss petitions filed by parcel owners  
32 challenging the value of the parcel for the year of the collapse. The law specifies that s.  
33 197.319, F.S., relating to refunds due from catastrophic events, does not apply to any  
34 parcel for which an abatement of taxes is provided under s. 197.3195, F.S., due to a  
35 sudden and unforeseen collapse.  
36

37 Section 197.3195, F.S. is repealed December 31, 2023, unless reenacted by the  
38 Legislature. See Chapter 2022-97, Sections 16 and 17, Laws of Florida, (CS/HB 7071),  
39 effective May 6, 2022 and retroactive to January 1, 2021.  
40

41 The legislation created section 197.319, F.S., to provide a prorated refund of property  
42 taxes for residential property rendered uninhabitable for 30 days or more due to a

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1 catastrophic event in 2023 or thereafter. A “catastrophic event” is defined as a calamity  
2 or misfortune not caused, either directly or indirectly, by the property owner with the  
3 intent to destroy the property. The bill includes the term “residential improvements”  
4 which are defined as, “real estate used and owned as a homestead as defined in  
5 section 196.012(13), F.S., or nonhomestead residential property as defined in section  
6 193.1554(1), F.S. If a residential improvement is rendered uninhabitable for at least 30  
7 days, the property owner may apply for a refund of a portion of their property taxes for  
8 the time the property was uninhabitable. The property owner must file an application for  
9 refund with the property appraiser by March 1 of the year immediately following the  
10 catastrophic event. Upon receipt of such application, the property appraiser must  
11 investigate to determine whether the applicant is entitled to the refund. If the property  
12 owner fails to file the application by the March 1 deadline due to particular extenuating  
13 circumstances, they may file an application for refund and may file a petition to the  
14 value adjustment board requesting that the refund be granted. See Chapter 2022-97,  
15 Sections 14 and 15, Laws of Florida, (CS/HB 7071), effective January 1, 2023.  
16

### Chronological Overview of Subsection 193.011(8), F.S.

17 ~~In 1963, the initial version of the first seven just valuation factors was enacted, effective~~  
18 ~~January 1, 1964. See Chapter 63-250, Laws of Florida, creating Section 193.021, F.S., which~~  
19 ~~was re-numbered in 1969 as Section 193.011, F.S., by Chapter 69-55, Laws of Florida.~~  
20

21  
22 ~~In 1965, the Florida Supreme Court held that just value was synonymous with fair~~  
23 ~~market value and defined fair market value as: “the amount a purchaser willing but not~~  
24 ~~obliged to buy, would pay to one willing but not obliged to sell.” See Walter v. Schuler, 176~~  
25 ~~So.2d 81 (Fla. 1965).~~  
26

27 ~~NOTE: The eighth just valuation criterion did not exist at the time of Walter v. Schuler.~~  
28 ~~The Legislature can override decisional law. See Dept. of Environmental Protection v.~~  
29 ~~Contractpoint Florida Parks, 986 So.2d 1260, 1269 (Fla. 2008).~~  
30

31 ~~Then, in 1967, the Legislature enacted the first part of the eighth criterion as subsection~~  
32 ~~193.021(8), F.S., in the form presented below. See Chapter 67-167, Laws of Florida,~~  
33 ~~creating Subsection 193.021(8), F.S., which was re-numbered in 1969 as Subsection 193.011(8),~~  
34 ~~F.S., by Chapter 69-55, Laws of Florida.~~  
35

36 ~~(8) The net proceeds of the sale of the property, as received by the seller, after~~  
37 ~~deduction of all of the usual and reasonable fees and costs of the sale, including the~~  
38 ~~costs and expenses of financing.~~  
39

40 ~~In 1977, the language underlined below was added to subsection 193.011(8), F.S. See~~  
41 ~~Chapter 67-167, Laws of Florida, creating Subsection 193.021(8), F.S., which was re-numbered~~  
42 ~~in 1969 as Subsection 193.011(8), F.S., by Chapter 69-55, Laws of Florida.~~

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1  
2 ~~(8) The net proceeds of the sale of the property, as received by the seller, after~~  
3 ~~deduction of all of the usual and reasonable fees and costs of the sale, including the~~  
4 ~~costs and expenses of financing, and allowance for unconventional or atypical terms of~~  
5 ~~financing arrangements.~~

6  
7 ~~In 1979, the language underlined below was added to subsection 193.011(8), F.S. See~~  
8 ~~Chapter 79-334, Laws of Florida.~~

9  
10 ~~(8) The net proceeds of the sale of the property, as received by the seller, after~~  
11 ~~deduction of all of the usual and reasonable fees and costs of the sale, including the~~  
12 ~~costs and expenses of financing, and allowance for unconventional or atypical terms of~~  
13 ~~financing arrangements. When the net proceeds of the sale of any property are utilized,~~  
14 ~~directly or indirectly, in the determination of just valuation of realty of the sold parcel or~~  
15 ~~any other parcel under the provisions of this section, the property appraiser, for the~~  
16 ~~purposes of such determination, shall exclude any portion of such net proceeds~~  
17 ~~attributable to payments for household furnishings or other items of personal property.~~

18  
19 ~~Through 2018, no further amendments have been made to subsection 193.011(8), F.S.~~

20  
21 ~~In 1984, when reviewing a 1980 assessment, a federal appellate court found that just~~  
22 ~~value as determined under subsection 193.011(8), F.S., does not represent full market~~  
23 ~~value. See Louisville and Nashville Railroad Co. v. Department of Revenue, State of Fla., 736~~  
24 ~~F.2d 1495 (11th Cir. (Fla.) July 24, 1984).~~

25  
26 ~~In 1982, the Legislature enacted subsection 192.001(18), F.S. See Chapter 82-388, Laws~~  
27 ~~of Florida.~~

28  
29 ~~\*\_\_\_\_\_ This statute provides minimum reporting standards for a property appraiser's~~  
30 ~~complete submission of an assessment roll to the Department of Revenue. These~~  
31 ~~standards include the following for adjustments made by the property appraiser under~~  
32 ~~subsection 193.011(8), F.S.:~~

33  
34 ~~“(18) ‘Complete submission of the roll’ includes, but is not necessarily limited to, ...an~~  
35 ~~accurate tabular summary by property class of any adjustments made to recorded~~  
36 ~~selling prices or fair market value in arriving at assessed value, as prescribed by~~  
37 ~~department rule;...” (underlined emphasis added).~~

38  
39 ~~Rule 12D-8.002(4), F.A.C., which implements subsection 192.001(18), F.S., was~~  
40 ~~adopted effective September 30, 1982.~~

41

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1 \* ~~Rule 12D-8.002(4), F.A.C., provides the following requirement for submittals of~~  
2 ~~preliminary assessment rolls to the Department:~~

3  
4 ~~“(4) Accompanying the assessment roll submitted to the Executive Director shall be, on~~  
5 ~~a form provided by the Department, an accurate tabular summary by property class of~~  
6 ~~any adjustments made to recorded selling prices or fair market value in arriving at~~  
7 ~~assessed value. Complete, clear, and accurate documentation for each adjustment~~  
8 ~~under section 193.011(8), F.S., exceeding fifteen percent shall accompany this~~  
9 ~~summary detailing how that percentage adjustment was calculated. This documentation~~  
10 ~~shall include individual data for all sales used and a narrative on the procedures used in~~  
11 ~~the study.” (underlined emphasis added)~~

12  
13 ~~It is important to note that this rule does not, in any way, indicate that property~~  
14 ~~appraisers are required to apply any particular eighth criterion adjustment. Though not~~  
15 ~~required by law, in their actual practice, property appraisers do make across-the-board,~~  
16 ~~eighth criterion adjustments in arriving at their annual just values of real property.~~

17  
18 \* ~~The statement in the rule regarding 15 percent is merely a reporting threshold~~  
19 ~~that, if exceeded, would require a documented research study to justify the reported~~  
20 ~~adjustment.~~

21  
22 ~~To facilitate annual reporting of eighth criterion adjustments in accordance with~~  
23 ~~subsection 192.001(18), F.S., and Rule 12D-8.002(4), F.A.C., the Department of~~  
24 ~~Revenue developed Form DR-493 for each property appraiser to use.~~

25  
26 \* ~~Each year, using Form DR-493, property appraisers are required to report to the~~  
27 ~~Department the adjustments made by the property appraiser to recorded selling prices~~  
28 ~~or fair market value for each parcel within each of the 18 real property use code groups~~  
29 ~~listed on the form.~~

30  
31 \* ~~The Forms DR-493 completed and certified annually by each Property Appraiser~~  
32 ~~are available by clicking on “Assessment Roll Evaluation and Approval” at:~~  
33 ~~<http://floridarevenue.com/property/Pages/DataPortal.aspx>~~

### **Operation of the Eighth Criterion Under Florida Law**

34  
35  
36 ~~Subsection 193.011(8), F.S., requires proper consideration of the “net proceeds of~~  
37 ~~sale,” regardless of whether the property was sold, stating in pertinent part:~~

38  
39  
40 ~~*“When the net proceeds of the sale of any property are utilized, directly or indirectly, in*~~  
41 ~~*the determination of just valuation of realty of the sold parcel or any other parcel under*~~  
42 ~~*the provisions of this section...”*~~

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1  
2 ●—— This provision clearly shows legislative intent for the net proceeds of sale to be  
3 applied in just valuations of both sold parcels and unsold parcels.  
4

5 In Oyster Pointe Condo. Assoc., Inc. v. Nolte, 524 So.2d 415, 418 (Fla. 1988), the  
6 Florida Supreme Court, in holding that timeshare marketing costs were not (under  
7 timeshare statutes at that time) part of the “reasonable fees and costs of sale” under  
8 section 193.011(8), tellingly stated as follows:  
9

10 “However, as we read section 193.011(8), these costs are not among the “reasonable  
11 fees and costs of sale” contemplated by the legislature to be excluded from the ad  
12 valorem appraisal process.” (underlined emphasis added)  
13

14 ●—— This holding is notable because it explains legislative intent for the costs of sale  
15 to be “excluded from the ad valorem appraisal process” without exception.  
16

17 ●—— This holding aligns with uniform application of the cost of sale factor, without  
18 regard to whether the property was sold or to the approach used to value the property.  
19

20 Further, a failure to uniformly apply the “net proceeds of sale” factor, to both sold and  
21 unsold parcels, would be selective reappraisal.  
22

23 The text, Mass Appraisal of Real Property, published in 1999 by the International  
24 Association of Assessing Officers, page 315, describes the highly undesirable practice  
25 of selective reappraisal as follows:  
26

27 “The reliability of sales ratio statistics depends on unsold parcels being appraised in the  
28 same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio  
29 results, possibly rendering them useless. Equally important, selective reappraisal of  
30 sold parcels (“sales chasing”) is a serious violation of basic appraisal uniformity and is  
31 highly unprofessional.” (underlined emphasis added)  
32

33 Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See  
34 Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).  
35

36 At least two other court decisions have approved an adjustment for the eighth criterion  
37 in just valuations. See Roden v. GAC Liquidating Trust, 462 So.2d 92 (Fla. 2nd DCA 1985).  
38 Also, see Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272 (Fla.  
39 4th DCA 1995) review denied 673 So.2d 30 (Fla. 1996), stating the following in an example:  
40 “Subtracting the \$15,000 (cost of sale) from the \$100,000 selling price leaves a net value of  
41 \$85,000. We find no impropriety in using this approach to valuation.”  
42

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1 Under Florida law, property appraisers are authorized, but are not required, to make  
2 eighth criterion adjustments in real property just valuations.

3  
4 \*——— Though not required by law, in arriving at their annual just values property  
5 appraisers make across-the-board adjustments to recorded selling prices or fair market  
6 value of real property to reflect their consideration of subsection 193.011(8), F.S. See  
7 Department of Revenue Form DR-493 reported each year.

8  
9 At least two court decisions have noted the practice of making across-the-board  
10 adjustments to real property for the eighth criterion. See Louisville and Nashville Railroad  
11 Co. v. Department of Revenue, State of Fla., 736 F.2d 1495 (11<sup>th</sup> Cir.(Fla.) July 24, 1984), and  
12 Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272 (Fla. 4th DCA  
13 1995) review denied 673 So.2d 30 (Fla. 1996).

14  
15 Each year, property appraisers are required to lawfully report to the Department of  
16 Revenue the lawful adjustments the property appraiser made to recorded selling prices  
17 or fair market value of real property in consideration of subsection 193.011(8), F.S. See  
18 Subsection 192.001(18), F.S.; Rule 12D-8.002(4), F.A.C.; and Form DR-493 reported each year.

19  
20 Property appraisers report these adjustments using Form DR-493, and are required to  
21 report the adjustments made to recorded selling prices or fair market values within each  
22 of the real property use code groups listed on the form.

23  
24 \*——— The property appraiser lawfully making and reporting these adjustments is a  
25 professionally accepted appraisal practice under section 194.301, F.S.

26  
27 \*——— See Forms DR-493 that are certified and reported by property appraisers each  
28 year, available by clicking on “Assessment Roll Evaluation and Approval” at:  
29 <http://floridarevenue.com/property/Pages/DataPortal.aspx>

30  
31 The property appraiser is responsible for lawfully determining whether adjustments for  
32 the eighth factor are necessary for just valuation and is responsible for lawfully  
33 determining and reporting the amount of the adjustments made.

34  
35 The Department of Revenue does not determine whether the property appraiser should  
36 make adjustments in consideration of subsection 193.011(8), F.S., and does not  
37 determine the amount of any lawful adjustments made by the property appraiser.

38  
39 The Department administers a reporting threshold that requires justifying research,  
40 data, analysis, and documentation from the property appraiser under certain conditions.  
41 See Rule 12D-8.002(4), F.A.C.

42

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### 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 a county property appraiser's 2010 Mass Appraisal Report (authored by Tim Wilmath, MAI, Director of Valuation).

\* ~~\_\_\_\_\_ This 2010 Mass Appraisal Report was presented as evidence at Board hearings.~~

\* ~~\_\_\_\_\_ Below are excerpts from this report explaining how across-the-board, eighth criterion adjustments are made to all property without regard to whether a property was sold and without regard to which valuation approach or technique was used.~~

~~"The property appraiser considers the 8th criterion by adjusting all sale prices downward by 15% to reflect costs of sale. This downward adjustment is made before the sales are used to value the population of properties."~~

~~"Each year, the property appraiser's office submits Form DR-493 to the Department of Revenue, indicating the costs of sale adjustments that were made to sale prices. As indicated below, the...County Property Appraiser's office adjusts recorded sale prices by 15% in arriving at assessed values."~~

~~"In the cost/market hybrid approach, the costs of sale adjustment is applied by deducting 15% from sale prices before calculating the appropriate base rate. For example, after deducting land value and extra feature value, the contributory value of an average quality single family home based on 4th quarter sales, is \$54.50 per square foot. Deducting 15% results in a base rate for single family homes of \$46.00 per square foot (rounded). This same exercise is conducted for every property type. Once all base rate adjustments have been made, a review of sales ratios is conducted to ensure the assessments are at or below 85% of sale prices."~~

~~"A more common approach to deducting the 15% costs of sale, is to apply rates and factors that achieve an assessment ratio of 85% or less. By ensuring that assessments are at or below 85% of sales prices, the 15% costs of sale adjustment is effectively factored into assessments. When there are no sales of a given property type for a given tax year, the rates extracted from Marshall Valuation Service are adjusted to reflect the 15% costs of sale. For all property types, whether sales exist or not, rates are adjusted to reflect the 15% costs of sale."~~

~~"For land valuation, the goal is a land assessment to vacant sale ratio of 85% or less. When few or even no vacant land sales exist, ratios are reviewed to ensure the estimated land value for any given neighborhood results in an improved assessment to sale ratio of 85% or less."~~

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1 ~~“In the sales comparison approach, sale prices are adjusted by 15% before adjustments~~  
2 ~~for various factors are applied. This adjustment is evident in the screen shot below.”~~

3  
4 ~~“The income models created by our office are designed to arrive at values that are~~  
5 ~~approximately 85% or less of gross sale prices of similar properties.”~~

6  
7 ~~“For all property types, the property appraiser strives to achieve assessed values that~~  
8 ~~are at or below 15% of the prior year's selling prices. This is evident in the graph below~~  
9 ~~that illustrates the difference between assessments and selling prices over the past 6~~  
10 ~~years.”~~

11  
12 ~~In another example of an actual reported practice, a document produced in 2011 by~~  
13 ~~another Florida property appraiser contains the following description of how his office~~  
14 ~~applies across the board, eighth criterion adjustments in all three approaches to just~~  
15 ~~valuation of all real property, without regard to whether the property was sold:~~

16  
17 ~~“In the Office of the...County Property Appraiser, all recorded sales of real property are~~  
18 ~~reduced by 15% to reflect the seller's typical “costs of sale.” Thus, only 85% of the~~  
19 ~~recorded sales price is recognized by the Property Appraiser. This adjusted sales prices~~  
20 ~~(reflecting the seller's “net proceeds”) are then entered into the Property Appraiser's~~  
21 ~~Computer Assisted Mass Appraisal (CAMA) program, along with other data pertaining~~  
22 ~~to the remaining seven statutory criteria enumerated in section 193.011, Florida~~  
23 ~~Statutes. From this mass compilation of data involving thousands of entries, the~~  
24 ~~Property Appraiser's computer system generates a market value assessment for the~~  
25 ~~particular kind of property. This is how value indications of real property are developed.~~  
26 ~~The CAMA system, therefore, determines a real property assessment which is based~~  
27 ~~upon the consideration and use, where appropriate, of all eight factors and complies~~  
28 ~~with the requirements of §193.011.”~~

29  
30 ~~“The CAMA generated assessment is neither a sales comparison approach to~~  
31 ~~determining value nor an income capitalization approach to value nor a cost less~~  
32 ~~depreciation approach to value. Rather, it is a hybrid of all three appraisal methods in~~  
33 ~~which the eighth criteria is properly considered and used when deriving just value.”~~

### **~~The Eighth Criterion in Real Property Administrative Reviews~~**

34  
35  
36 ~~The eighth criterion is one of the statutory criteria in section 193.011, F.S., which~~  
37 ~~Boards and special magistrates must properly consider in administrative reviews of real~~  
38 ~~property just valuations under section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.~~

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1 ~~Boards and special magistrates should determine whether the property appraiser has~~  
2 ~~reported to the Department an eighth criterion adjustment for the petitioned real~~  
3 ~~property type and whether the Department has accepted the reported adjustment.~~

4  
5 ~~\*—— This determination can be made by reviewing the Form DR-493 submitted~~  
6 ~~annually by each property appraiser and accepted by the Department.~~

7  
8 ~~\*—— These documents are available by clicking on “Assessment Roll Evaluation and~~  
9 ~~Approval” at:~~

10 ~~—— <http://floridarevenue.com/property/Pages/DataPortal.aspx>~~

11  
12 ~~\*—— The property appraiser lawfully making and reporting these adjustments is a~~  
13 ~~professionally accepted appraisal practice under section 194.301, F.S.~~

14  
15 ~~In determining whether the property appraiser’s just valuation complies with section~~  
16 ~~193.011, F.S., and professionally accepted appraisal practices, the Board or special~~  
17 ~~magistrate is authorized to ask related questions to enable the parties to provide the~~  
18 ~~evidence necessary for making this determination. See Rule 12D-9.025(7)(b), F.A.C.~~

19  
20 ~~\*—— To help determine how the property appraiser properly considered the eighth~~  
21 ~~criterion in developing the just value presented by the property appraiser, the Board or~~  
22 ~~special magistrate should ask questions regarding the eighth criterion adjustments~~  
23 ~~reported on the Form DR-493.~~

24  
25 ~~\*—— The Board or special magistrate should also ask questions regarding whether the~~  
26 ~~property appraiser applied, in arriving at his or her just value for the petitioned property,~~  
27 ~~the same eighth criterion adjustment reported for the subject property use code group~~  
28 ~~on the Form DR-493.~~

29  
30 ~~\*—— If, in arriving at his or her just value for the petitioned property, the property~~  
31 ~~appraiser applied an eighth criterion adjustment that is different from the adjustment that~~  
32 ~~he or she applied to parcels in the subject use code group as reported on the Form DR-~~  
33 ~~493, the Board or special magistrate should consider whether the appraisal practice~~  
34 ~~applied to the subject property is arbitrary under subparagraph 194.301(2)(a)3., F.S.~~

35  
36 ~~\*—— If the reported and accepted Form DR-493 is not voluntarily presented as~~  
37 ~~evidence, the Board or special magistrate should request a copy of such Form DR-493~~  
38 ~~from the property appraiser.~~

39  
40 ~~NOTE: Under subsection 194.301(1), F.S., a Board petitioner is entitled to a~~  
41 ~~determination by the Board or special magistrate of the appropriateness of the appraisal~~  
42 ~~methodology used in making the assessment.~~

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1  
2 \*—— The just value of property must be determined by an appraisal methodology that  
3 complies with the criteria of section 193.011, F.S., and professionally accepted  
4 appraisal practices.

5  
6 Professionally accepted appraisal practices are recognized by the Florida Legislature as  
7 a statutory just valuation criterion that must be properly considered by Boards and  
8 special magistrates in administrative reviews of assessments. See section 194.301, F.S.

9  
10 \*—— Florida law now requires Boards and special magistrates to employ both section  
11 193.011, F.S., and professionally accepted appraisal practices, in reviewing just  
12 valuations including revising just valuations when required by section 194.301, F.S.

13  
14 Boards and special magistrates must avoid using arbitrary appraisal practices as  
15 described in subparagraph 194.301(2)(a)3., F.S.

16  
17 Below are examples of how the Board or special magistrate should properly consider  
18 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

19  
20  
21  
22  
23 1.—— The Board or special magistrate determines from the accepted Form DR-493 that  
24 the property appraiser has reported and the Department has accepted a certain  
25 percentage adjustment for the eighth criterion for all real property within the petitioned  
26 property use code group.

27  
28 2.—— The Board or special magistrate determines from the admitted evidence that the  
29 property appraiser has not made an eighth criterion adjustment in arriving at the just  
30 value presented by the property appraiser for the petitioned property.

31  
32 \*—— An example of such evidence would be testimonial or documentary evidence  
33 from the property appraiser sufficient to prove that he or she did not make an eighth  
34 criterion adjustment in developing the just value presented by the property appraiser for  
35 the petitioned property.

36  
37 3.—— In such case, the Board or special magistrate should make, to the just value  
38 presented by the property appraiser for the petitioned property, the same eighth  
39 criterion adjustment reported by the property appraiser for the subject use code group  
40 on Form DR-493.

41

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1 ~~NOTE: The Board or special magistrate must avoid double-counting this adjustment. In~~  
2 ~~cases where the property appraiser has already made, in arriving at his or her~~  
3 ~~presented just value for the petitioned property, the same eighth criterion adjustment~~  
4 ~~reported on Form DR-493, the Board or special magistrate must not make an additional~~  
5 ~~eighth criterion adjustment to the property appraiser's presented just value for the~~  
6 ~~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

7  
8  
9  
10  
11 1. ~~The Board or special magistrate determines from the accepted Form DR-493 that~~  
12 ~~the property appraiser has reported and the Department has accepted a certain~~  
13 ~~percentage adjustment for the eighth criterion for all real property within the petitioned~~  
14 ~~property use code group.~~

15  
16 2. ~~The Board or special magistrate determines from the admitted evidence that the~~  
17 ~~property appraiser has already made, in arriving at the just value presented by the~~  
18 ~~property appraiser for the petitioned property, an eighth criterion adjustment that is~~  
19 ~~equal to the adjustment reported for the subject use code group on Form DR-493.~~

20  
21 \* ~~An example of such evidence would be testimonial or documentary evidence~~  
22 ~~from the property appraiser sufficient to prove that he or she did make, in developing~~  
23 ~~the just value presented by the property appraiser for the petitioned property, an eighth~~  
24 ~~criterion adjustment equal to the adjustment reported for the subject use code group on~~  
25 ~~Form DR-493.~~

26  
27 3. ~~The Board or special magistrate must avoid repeating the eighth criterion~~  
28 ~~adjustment that has already been made by the property appraiser in arriving at the just~~  
29 ~~value presented by the property appraiser for the petitioned property.~~

### Considering the Eighth Criterion and Evidence of a Real Property Sale

30  
31  
32 ~~When considering admitted evidence of an arm's length sale of real property, the Board~~  
33 ~~or special magistrate must determine whether an eighth criterion adjustment should be~~  
34 ~~made to the presented sale price under sections 194.301 and 193.011, F.S.~~

35  
36  
37 \* ~~The Board or special magistrate must avoid double-counting this adjustment and~~  
38 ~~not repeat any adjustment amount that has already been made to the presented sale~~  
39 ~~price, whether such adjustment amount was made as a dollar amount or a percentage~~  
40 ~~amount.~~

41

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1 \* ~~\_\_\_\_\_ The Board or special magistrate is not precluded from making an eighth criterion~~  
2 ~~adjustment to the presented, arm's length sale price when such adjustment would not~~  
3 ~~result in double counting and when such adjustment is justified by sufficiently relevant~~  
4 ~~and credible evidence.~~

5  
6 \* ~~\_\_\_\_\_ In considering whether an eighth criterion adjustment to the presented sale price~~  
7 ~~is justified, the Board or special magistrate must first determine the basis or origin of the~~  
8 ~~presented sale price and determine whether the presented sale price has already been~~  
9 ~~adjusted for the eighth criterion.~~

10  
11 \* ~~\_\_\_\_\_ The Board or special magistrate should make, to the presented arm's length sale~~  
12 ~~price, the eighth criterion adjustment that is justified by sufficiently relevant and credible~~  
13 ~~evidence when such adjustment would not result in double counting.~~

14  
15 \* ~~\_\_\_\_\_ In considering whether an eighth criterion adjustment to the presented sale price~~  
16 ~~is justified, the Board or special magistrate should consider the adjustment lawfully~~  
17 ~~made and lawfully reported by the property appraiser on Form DR-493 for the property~~  
18 ~~use code group of the sold property.~~

19  
20 \* ~~\_\_\_\_\_ If the Board or special magistrate determines that the arm's length sale price~~  
21 ~~presented by one of the parties is equal to the recorded selling price, the Board or~~  
22 ~~special magistrate should make, to such sale price, a percentage adjustment for the~~  
23 ~~eighth criterion that is equal to the percentage adjustment lawfully made and reported~~  
24 ~~by the property appraiser on Form DR-493 for the property use code group of the sold~~  
25 ~~property.~~

26  
27 \* ~~\_\_\_\_\_ If the presented sale price is determined to be different from the recorded selling~~  
28 ~~price and if an eighth criterion adjustment would not result in double counting, the Board~~  
29 ~~or special magistrate should make, to such presented sale price, an eighth criterion~~  
30 ~~adjustment that results in consistency with the adjustment lawfully made and reported~~  
31 ~~by the property appraiser on Form DR-493 for the property use code group of the sold~~  
32 ~~property.~~

33  
34 ~~NOTE: If a party believes an overall eighth criterion adjustment greater than that~~  
35 ~~reported on Form DR-493 is justified for a particular sale, the party is responsible for~~  
36 ~~presenting relevant and credible evidence in support of that belief.~~

37  
38 \* ~~\_\_\_\_\_ Then, the Board or special magistrate is responsible for determining, in~~  
39 ~~accordance with law, whether the hearing record contains sufficient evidence to justify a~~  
40 ~~higher overall eighth criterion adjustment to that particular sale price.~~

41

## 2022+ Value Adjustment Board Training - Module 6

1 After making an appropriate eighth criterion adjustment, if any, to the presented sale  
2 price, the Board or special magistrate should then compare the sold property to the  
3 petitioned property in light of the other seven just valuation factors and in accordance  
4 with Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House  
5 Bill 521).

6  
7 \*——— The information above does not suggest or indicate that a Board or special  
8 magistrate should “chase sales,” which in this context would mean to automatically  
9 adjust the just value of a petitioned property (that was recently sold) to a number that is  
10 equal to its adjusted recorded selling price (after an eighth criterion adjustment) while  
11 ignoring the other seven just valuation factors.

12  
13 \*——— There is no legal requirement that the net proceeds of sale constitute the  
14 deciding factor in just valuation. See In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006).

15  
16 \*——— The use of net sales price alone, without considering and weighing the other  
17 factors, is legally insufficient to constitute compliance with the mandate of Section  
18 193.011, F.S. See Florida Attorney General’s Opinion AGO 77-106, September 29, 1977.

19  
20 As stated previously in this training module, the just value of any personal property must  
21 be excluded from just valuations of real property.

### **Applicability of the Eighth Criterion in Other Valuation Approaches**

22  
23 Provisions of section 194.301, F.S., require that the just valuation standards of section  
24 193.011, F.S., which include the eighth criterion, must be followed regardless of:  
25 1) whether the property was sold, 2) the valuation approach used, or 3) whether single  
26 property appraisal techniques or mass appraisal techniques were used.

27  
28  
29 \*——— None of these three items are supported in current law as just valuation criteria.

30  
31 The eighth criterion requires proper consideration of the “net proceeds of sale” of the  
32 property, regardless of whether an actual sale of the property has occurred.

33  
34 \*——— When an actual sale of the property has not occurred, the appraiser must, in  
35 arriving at just valuation, place himself or herself in the position of the parties to a  
36 hypothetical sale. See Southern Bell Telephone and Telegraph Co. v. Dade County, 275 So.2d  
37 4 (Fla. 1973) and Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000)  
38 review denied 780 So.2d 916 (Fla. 2001).

39  
40 In long-established and accepted practice, Florida property appraisers routinely apply  
41 across the board, eighth criterion adjustments in just valuations of real property, without  
42 regard to the valuation approach or technique used or whether the property was sold.

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1  
2 \*~~\_\_\_\_\_ These adjustments are certified and reported annually by property appraisers on~~  
3 ~~Forms DR-493, which are available on the Department's website at:~~  
4 ~~<ftp://sdrftp03.dor.state.fl.us/DR-493-8th-Criterion/>~~  
5

6 \*~~\_\_\_\_\_ At least two court decisions have noted the practice of making across-the-board~~  
7 ~~adjustments to real property for the eighth criterion. See Louisville and Nashville Railroad~~  
8 ~~Co. v. Department of Revenue, State of Fla., 736 F.2d 1495 (11<sup>th</sup> Cir. (Fla.) July 24, 1984), and~~  
9 ~~Southern Bell Telephone and Telegraph Co. v. Broward County, 665 So.2d 272 (Fla. 4th DCA~~  
10 ~~1995) review denied 673 So.2d 30 (Fla. 1996).~~  
11

12 ~~To not apply, when otherwise warranted, the eighth criterion in an administrative review~~  
13 ~~because the property has not been sold, or based on the valuation approach or~~  
14 ~~technique used, would result in an arbitrary appraisal practice under subparagraph~~  
15 ~~194.301(2)(a)3., F.S.~~  
16

17 ~~The case of Bystrom v. Equitable Life Assurance Society, 416 So.2d 1133 (Fla. 3<sup>rd</sup> DCA~~  
18 ~~1982) has been cited in support of the proposition that the eighth criterion does not~~  
19 ~~apply to valuation approaches other than the sales comparison approach or unless the~~  
20 ~~subject property was sold.~~  
21

22 \*~~\_\_\_\_\_ Such proposition is not supported by current law and is contrary to the long-~~  
23 ~~established, professionally accepted appraisal practice employed by property~~  
24 ~~appraisers of making across-the-board, eighth-criterion adjustments without regard to~~  
25 ~~whether the property was sold or to which valuation approach is used.~~  
26

27 \*~~\_\_\_\_\_ The Bystrom case reviewed a 1978 assessment based on 1977 statutes. Later,~~  
28 ~~in 1979, the eighth criterion was amended to add a personal property component. See~~  
29 ~~Chapter 79-334, Laws of Florida.~~  
30

31 \*~~\_\_\_\_\_ The eighth criterion now requires proper consideration of an adjustment for both~~  
32 ~~costs of sale and any personal property. See subsection 193.011(8), F.S.~~  
33

34 \*~~\_\_\_\_\_ Bystrom reflects no record evidence of the professionally accepted appraisal~~  
35 ~~practice established long ago by property appraisers of making across-the-board, eighth~~  
36 ~~criterion adjustments to all sales and to all parcels regardless of whether a parcel was~~  
37 ~~sold and regardless of which valuation approach or technique is used.~~  
38

39 \*~~\_\_\_\_\_ Perhaps Bystrom does not reflect such record evidence because it predates the~~  
40 ~~statutory amendment that now requires the property appraiser to report the across-the-~~  
41 ~~board, eighth-criterion adjustments made by the property appraiser regardless of~~  
42 ~~whether the property was sold and regardless of the valuation approach used. See~~

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1 Chapter 82-388, Laws of Florida, creating subsection 192.001(18), F.S., and see Rule 12D-  
2 8.002(4), F.A.C.

3  
4 \*——— The Bystrom case is clearly distinguishable from current practice and, thus,  
5 generally would not apply in administrative reviews of assessments under Chapter 194,  
6 Part 3, F.S.

7  
8 \*——— The Bystrom holding has been superseded by section 194.301, F.S., which  
9 precludes arbitrary just valuation practices and provides that all just valuations must  
10 comply with section 193.011, F.S., and professionally accepted appraisal practices.

11  
12 \*——— The law on which the long-established operation of the eighth criterion is based  
13 has changed substantially since the assessment date in Bystrom.

14  
15 \*——— The facts in Bystrom reveal that the decision was based on “unconventional or  
16 atypical financing.”

17  
18 \*——— Thus, the holding in Bystrom is limited to only factual situations where an  
19 adjustment for “unconventional or atypical financing” is the issue. Accordingly, Bystrom  
20 would *not preclude* a typical eighth criterion adjustment, in any valuation approach, for  
21 “usual and reasonable fees and costs of the sale...”

### **Eighth Criterion Applies in Both Mass Appraisal and Single Property Appraisal**

22  
23  
24 Some have argued that the eighth criterion applies only to the mass appraisal of groups  
25 of properties and is inapplicable to a single property analysis such as a Board petition.

26  
27  
28 \*——— Such argument is not supported in fact or law, and is contrary to the long-  
29 established, professionally accepted appraisal practice employed by property  
30 appraisers of making across-the-board, eighth criterion adjustments without regard to  
31 whether mass appraisal or single property appraisal is used.

32  
33 \*——— Florida law does not provide for any variation in the applicability of the factors in  
34 section 193.011, F.S., based on whether mass appraisal or single property appraisal is  
35 used.

36  
37 \*——— To not apply, when otherwise warranted, the eighth criterion in an administrative  
38 review because the assessment is being reviewed using single property analysis would  
39 result in an arbitrary appraisal practice under subparagraph 194.301(2)(a)3., F.S.

40

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1 \* ~~In fact, a Florida appellate court has approved an eighth criterion adjustment~~  
2 ~~made in the just valuation of a single parcel under judicial review. See Roden v. GAC~~  
3 ~~Liquidating Trust, 462 So.2d 92 (Fla. 2nd DCA 1985).~~

### **Properly Considering the Eighth Criterion in Other Valuation Approaches**

6 ~~A previous section in this module addressed the proper consideration of the eighth~~  
7 ~~criterion when comparable sales are used (the sales comparison approach).~~

9  
10 \* ~~This section addresses the proper consideration of the eighth criterion in the~~  
11 ~~other two valuation approaches, the income capitalization approach and the cost less~~  
12 ~~depreciation approach.~~

13  
14 ~~When considering a value indicator developed by either of these two valuation~~  
15 ~~approaches, the Board or special magistrate must determine whether an eighth criterion~~  
16 ~~adjustment should be made to such value indicator.~~

17  
18 \* ~~The Board or special magistrate must avoid double counting this adjustment and~~  
19 ~~must not repeat any adjustment amount that has already been made, whether such~~  
20 ~~adjustment amount was made as a dollar amount or a percentage amount.~~

21  
22 \* ~~The Board or special magistrate is not precluded from making an eighth criterion~~  
23 ~~adjustment to a value indicator developed by the income capitalization approach or the~~  
24 ~~cost less depreciation approach when such adjustment would not result in double-~~  
25 ~~counting and when such adjustment is justified by sufficient evidence.~~

26  
27 \* ~~In determining whether to make an eighth criterion adjustment to a value~~  
28 ~~indicator developed by either of these two approaches, the Board or special magistrate~~  
29 ~~must first determine how such value indicator was developed and determine whether~~  
30 ~~the indicator has already been adjusted for the eighth criterion.~~

31  
32 \* ~~The Board or special magistrate should make, to a value indicator developed by~~  
33 ~~the income capitalization approach or cost less depreciation approach, the eighth~~  
34 ~~criterion adjustment that is justified by sufficient evidence when this adjustment would~~  
35 ~~not result in double counting.~~

36  
37 \* ~~In determining whether to make an eighth criterion adjustment to such a value~~  
38 ~~indicator, the Board or special magistrate should consider the adjustment lawfully made~~  
39 ~~and lawfully reported by the property appraiser on Form DR-493 for the use code group~~  
40 ~~that contains the use code of the subject property.~~

41

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1 ~~\*\_\_\_\_\_When double-counting would not result, the Board or special magistrate should~~  
2 ~~make, to a value indicator developed by either of these two approaches, an eighth~~  
3 ~~criterion adjustment that results in consistency with the adjustment lawfully made and~~  
4 ~~lawfully reported by the property appraiser on Form DR-493 for the use code group of~~  
5 ~~the subject property.~~

6  
7 ~~NOTE: If a party believes an overall eighth criterion adjustment greater than that~~  
8 ~~reported on Form DR-493 is justified for a particular value indicator, the party is~~  
9 ~~responsible for presenting relevant and credible evidence in support of that belief.~~

10  
11 ~~\*\_\_\_\_\_Then, the Board or special magistrate is responsible for determining, in~~  
12 ~~accordance with law, whether the hearing record contains sufficient evidence to justify a~~  
13 ~~higher overall eighth criterion adjustment to that particular value indicator.~~

14  
15 ~~As stated previously in this training module, the just value of any personal property must~~  
16 ~~be excluded from just valuations of real property.~~

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## Module 7: Administrative Reviews of Classified Use Valuations and Assessed Valuations

Training Module 7 addresses the following topics:

### **PART 1**

#### **Administrative Reviews of Classified Use Valuations**

- Overview of Classified Use Valuation
- Statutory Criteria for Valuing Different Types of Classified Property
  - Statutory Criteria for Valuing Agricultural Property
    - Agricultural Property: The Income Approach
    - Agricultural Property: Quarantine and Eradication Programs
    - Agricultural Property: Special Types
      - Aquaculture
  - 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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- 1 • Identify and apply the sequence of general procedural steps for administrative
- 2 reviews of classified use valuations
- 3 • Recognize how to apply the preponderance of the evidence standard of proof in
- 4 administrative reviews of classified use valuations
- 5 • Identify the alternative actions required when a presumption of correctness was not
- 6 established, or was established but later was overcome
- 7 • Identify and apply the elements of the definition of competent substantial evidence
- 8 for establishing a revised classified use value
- 9 • Recognize the conditions under which a Board or special magistrate is required to
- 10 establish a revised classified use value
- 11 • Identify and apply the definition of assessed value
- 12 • Recognize and apply the statutory criteria for the assessed valuation of homestead
- 13 property
- 14 • Recognize and apply the statutory criteria for the assessed valuation of non-
- 15 homestead property
- 16 • Recognize differences in administration of limitations on non-homestead residential
- 17 property with nine or fewer units and other non-homestead property
- 18 • Identify and apply the sequence of general procedural steps for administrative
- 19 reviews of assessed valuations of limited increase properties
- 20 • Recognize how to apply the preponderance of the evidence standard of proof in
- 21 administrative reviews of assessed valuations of limited increase properties
- 22 • Identify and apply the elements of the definition of competent substantial evidence
- 23 for establishing a revised assessed value
- 24 • Recognize the conditions under which a Board or special magistrate is required to
- 25 establish a revised assessed value

### PART 1

#### **Overview of Classified Use Valuation**

31 “Classified use value” means an annual determination of the value of property that is  
32 assessed solely based on character or use, without regard to the property’s highest and  
33 best use.

34  
35 Classified use valuations are provided in Section 4(a), (b), and (e), Article VII, of the  
36 Florida Constitution (agricultural land, noncommercial recreational land, high-water  
37 recharge, conservation land, historic property) and in Section 4(j), Article VII of the State  
38 Constitution (working waterfront properties).

39  
40 NOTE: Legislation has not been enacted to implement assessment exclusions for  
41 residential improvements for resistance to wind damage under Section 4(i), Article VII,  
42 of the Florida Constitution.

43  
44 Except for working waterfront property, the statutory criteria for valuation of classified  
45 use property are provided in Chapter 193, Part 2, F.S.

46

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1 The statutory criteria for working waterfront property are set forth in Section 4(j), Article  
2 VII, of the Florida Constitution.

### 3 4 5 **Statutory Criteria for Valuing Different Types of Classified Property**

6 Statutory criteria for the following types of property classifications are presented below.

#### 7 8 Types of Property Classifications

- 9 • Agricultural Property
- 10 • Pollution Control Devices
- 11 • Noncommercial Recreational and Conservation Lands
- 12 • Historic Property
- 13 • High-water Recharge Property
- 14 • Working Waterfront Property
- 15 • Renewable Energy Source Devices

### 16 17 18 **Statutory Criteria for Valuing Agricultural Property**

19 Under Subsection 193.461(6)(a), F.S., the classified use valuation of agricultural land  
20 shall consider the following use factors only:

- 21
- 22 \* The quantity and size of the property;
- 23
- 24 \* The condition of the property;
- 25
- 26 \* The present market value of the property as agricultural land;
- 27
- 28 \* The income produced by the property;
- 29
- 30 \* The productivity of the land in its current use;
- 31
- 32 \* The economic merchantability of the agricultural product; and
- 33
- 34 \* Such other agricultural factors as may from time to time become applicable and  
35 which are reflective of the standard present practices of agricultural use and  
36 production.
- 37

### 38 39 **The Florida Agricultural Classified Use Appraisal Guidelines**

40 Below are provisions from Section 195.032, Florida Statutes, describing the Agricultural  
41 Classified Use Appraisal Guidelines.

42  
43 *“The standard measures of value shall provide guidelines for the valuation of*  
44 *property and methods for property appraisers to employ in arriving at the just*  
45 *valuation of particular types of property consistent with section ... 193.461.”*  
46

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1 See Rule 12D-51.001, Florida Administrative Code, for more information on the  
2 Agricultural Classified Use Appraisal Guidelines.

### **NOTICE:**

#### **These Guidelines Are Out-of-Date**

5  
6 The existing Florida Agricultural Classified Use Appraisal Guidelines were adopted in  
7 1982 and are now out-of-date due to various changes in law. For example, in a 2007  
8 decision, the U.S. Supreme Court held that appraisal is an “applied science” (not an art)  
9 and that appraisal methodology must be reviewed in ad valorem tax valuations. In  
10 another example, 2009 changes in sections 194.301 and 194.3015, F.S., substantially  
11 increased the legal standards for developing, reporting, and reviewing agricultural  
12 classified use valuations and also enacted the following additional determinative  
13 standards for agricultural classified use valuations: 1) compliance with professionally  
14 accepted appraisal practices; 2) avoidance of arbitrarily different appraisal practices  
15 within groups of comparable property within the same county; 3) avoidance of  
16 superseded case law; and 4) correct application of an appropriate appraisal  
17 methodology. Accordingly, the 1982 guidelines should not be used as a standard for  
18 agricultural classified use valuation development, reporting, or review. The Department  
19 has initiated the legal and professional research for updating the guidelines, which will  
20 include public notices and opportunities for public review and comment in an open and  
21 transparent process.

### **Agricultural Property: The Income Approach**

22  
23  
24 Under Subsection 193.461(6), F.S., when using the income approach to value  
25 agricultural land, the appraiser shall consider the average of the income from the  
26 property for the past five years, rather than the income from the last year alone.

27  
28  
29 \* Irrigation systems, including pumps and motors physically attached to the land, shall  
30 be considered part of the acreage under the income approach and not have a  
31 separately assessable value.

32  
33 \* Likewise, litter and waste containment structures on poultry and dairy farms shall be  
34 considered part of the acreage under the income approach and not have a  
35 separately assessable value.

### **Agricultural Property: Quarantine and Eradication Programs**

36  
37  
38 Under Subsection 193.461(7), F.S., agricultural land taken out of production due to a  
39 state or federal quarantine or eradication program shall continue to be classified as  
40 agricultural property.

41  
42  
43 \* If the land in the program lies fallow or is used for non-income producing purposes,  
44 the land shall have a de minimus value of no more than \$50 per acre.

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1 \* If the land in the program is used for another permissible agricultural use, the land  
2 shall be assessed based on that usage.

3  
4 \* If the land is converted to a non-agricultural use, it will be assessed as non-  
5 agricultural property under section 193.011, F.S.

6  
7 **Note:** Legislation was enacted in 2018 to amend section 193.461(6)(c), F.S. to provide  
8 that screened enclosed structures used in horticultural production for protection from  
9 pests and diseases or to comply with state or federal eradication or compliance  
10 agreements are a part of the average yields per acre and have no separately  
11 assessable value. See Chapter 2018-84, Section 1, Laws of Florida (CS/CS/SB 740).

12  
13 **Note:** Legislation was enacted in 2016 to amend section 193.461(7)(a), F.S., to provide  
14 that lands classified for assessment purposes as agricultural lands that a state or  
15 federal eradication or quarantine program takes out of production will remain agricultural  
16 lands for the remainder of the program. Lands that these programs convert to  
17 nonincome-producing uses will continue to be assessed at a minimum value of up to  
18 \$50 per acre on a single-year assessment methodology.

19  
20 This legislation identifies the Citrus Health Response Program as a state or federal  
21 eradication or quarantine program. The bill allows land to retain its agricultural  
22 classification for five years after the date of execution of a compliance agreement  
23 between the landowner and the Department of Agriculture and Consumer Services  
24 (DACS) or a federal agency, as applicable, for this program or successor programs.

25  
26 Lands under these programs that are converted to fallow or otherwise nonincome-  
27 producing uses are still agricultural lands assessed at a minimal value of up to \$50 per  
28 acre on a single-year assessment methodology while fallow or used for nonincome-  
29 producing purposes. Lands under these programs that are replanted in citrus according  
30 to the requirements of the compliance agreement are classified as agricultural lands  
31 and are assessed at a minimal value of up to \$50 per acre, on a single-year  
32 assessment methodology, during the five-year term of agreement.

33  
34 See Chapter 2016-88, Sections 1 and 5, Laws of Florida (CS/CS/HB 749).

### 35 36 37 **Agricultural Property: Special Types**

38 In addition to the classified use assessments of agricultural land discussed previously,  
39 there are additional provisions in Sections 193.451 and 193.4615, F.S., which address  
40 specific kinds of agricultural property.

41  
42 These provisions usually deal with the assessment of tangible personal property and  
43 instruct that such property should either have no value placed upon it or that it should  
44 be valued at salvage value.

45  
46 Items with no value:

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- 1 \* Growing annual crops
- 2 \* Nonbearing fruit trees
- 3 \* Raw agricultural products (until offered for sale)
- 4

5 Items valued as salvage:

- 6 \* Citrus grading and classification equipment leased from the Department of
- 7 Agriculture
- 8 \* Obsolete agricultural equipment
- 9

### **Aquaculture**

11 **Note:** Legislation enacted in 2022 created section 193.4613, F.S., to provide that  
12 beginning January 1, 2023, land used in the production of aquaculture and aquaculture  
13 products shall be assessed based solely on its agricultural use, consistent with section  
14 193.461(6)(a) and (c), F.S. See Chapter 2022-97, Sections 2, and 3, Laws of Florida, (CS/HB  
15 7071), effective January 1, 2023.  
16  
17

### **Pollution Control Devices**

18 This property classification and its valuation are governed by Section 193.621, F.S.,  
19 which provides the following:  
20

- 21
- 22 \* Pollution control devices installed in manufacturing or industrial plants or installations  
23 shall be valued as salvage;
- 24
- 25 \* Demolition and reconstruction of part of such a facility for the purpose of reducing  
26 pollution, and which does not substantially increase the productivity of the facility,  
27 shall not increase the facility's assessed value;
- 28
- 29 \* The property appraiser is authorized to seek a recommendation from the  
30 Department of Environmental Protection as to what constitutes pollution control; and  
31
- 32 \* The Department of Environmental Protection is authorized to promulgate rules  
33 concerning this classification.  
34

35 "Salvage value" is defined in rules of the Department of Environmental Protection as  
36 follows:  
37

38 *"the estimated fair market value, if any, which may be realized upon the sale or other*  
39 *disposition of a pollution control facility when it can no longer be used for the purpose*  
40 *for which it was designed."* See Rule 62-8.020, F.A.C.  
41  
42

### **Noncommercial Recreation and Conservation Lands**

43 This property classification and its valuation are governed by Section 193.501, F.S.  
44  
45

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1 To receive this classification, property must be subject to a conservation easement,  
2 qualified as environmentally endangered land, designated as conservation land, or used  
3 for outdoor recreational or park purposes.

4  
5 If the covenant or conveyance extends for more than ten years, the property shall be  
6 valued considering no factors other than those relative to its value for the present use  
7 as restricted by the covenant or conveyance.

8  
9 If the covenant has less than ten years left, the property will be valued at just value  
10 considering the restrictions imposed by the covenant.

### 11 12 13 **Historic Property: Sections 193.503 and 193.505, F.S.**

14 Under Subsection 193.503(5), F.S., historic property is to be assessed using the  
15 following factors only:

- 16
- 17 \* Quantity and size of property;
- 18 \* Condition of property;
- 19 \* Present market value as historic property used for commercial or certain nonprofit  
20 purposes; and
- 21 \* Income produced by the property.

22  
23 The historic property addressed under Subsection 193.505(3), F.S., must be valued  
24 recognizing the nature and length of the restriction placed on the use of the property  
25 under the provisions of the conveyance or covenant.

### 26 27 28 **High-Water Recharge Property**

29 To allow this classification, the county must choose to adopt an ordinance providing for  
30 this classification and its valuation. See Subsections 193.625(1) and (5), F.S.

31  
32 The county's ordinance must provide the formula for assessing property that qualifies  
33 for this classification. See Subsection 193.625(5)(b), F.S.

34  
35 In counties that choose to adopt such ordinance, municipalities may also adopt an  
36 ordinance providing for classification and valuation of this property type. See Subsection  
37 193.625(5)(d), F.S.

### 38 39 40 **Working Waterfront Property (Classification Effective 2010)**

41 The Florida Constitution sets forth criteria for classifying and valuing working waterfront  
42 property.

43  
44 The provisions of Amendment 6, regarding working waterfronts, have been placed in  
45 the Florida Constitution at Article VII, Section (4)(j), effective for the 2010 assessment  
46 year. These provisions state as follows:

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- 1  
2       “(j)(1) *The assessment of the following working waterfront properties shall*  
3       *be based upon the current use of the property:*  
4       *a. Land used predominantly for commercial fishing purposes.*  
5       *b. Land that is accessible to the public and used for vessel launches*  
6       *into waters that are navigable.*  
7       *c. Marinas and drystacks that are open to the public.*  
8       *d. Water-dependent marine manufacturing facilities, commercial*  
9       *fishing facilities, and marine vessel construction and repair*  
10       *facilities and their support activities.*  
11       “(2) *The assessment benefit provided by this subsection is subject to*  
12       *conditions and limitations and reasonable definitions as specified by*  
13       *the legislature by general law.”*  
14

15 The constitutional amendment on working waterfront property is self-executing with  
16 authorization for the Legislature to elaborate by general law.  
17

18 In the 2009 and 2010 sessions, the Legislature considered bills that did not pass but  
19 that would have contained guidance for classifying and valuing working waterfront  
20 property. These bills would have applied to the 2010 tax year if they had become law.  
21

22 Amendment 6, creating classification of property used for working waterfronts, is  
23 effective for the 2010 year in the absence of legislation.  
24  
25

### **Renewable Energy Source Devices**

- 27 \* Legislation enacted in 2013 created section 193.624, F.S., to provide for  
28 assessment of a "renewable energy source device" installed on or after January 1,  
29 2013, to new and existing residential real property.  
30  
31 \* When determining the assessed value of real property used for residential purposes,  
32 an increase in the just value of the property attributable to the installation of a  
33 renewable energy source device may not be considered.  
34  
35 \* This requirement is an exception to certain provisions relating to assessment of  
36 changes, additions, or improvements in sections 193.155 and 193.1554, F.S.  
37  
38 \* This legislation is effective July 1, 2013 and applies to assessments and  
39 administrative reviews beginning in 2014. See Chapter 2013-77, Sections 1, 2, and 3,  
40 Laws of Florida (HB 277).  
41

42 **Note:** Legislation enacted in 2017 amended section 193.624, F.S., to provide that, for  
43 nonresidential real property, 80 percent of the just value attributable to a renewable  
44 energy source device may not be considered in determining the assessed value of the  
45 property; this provision applies to devices installed on nonresidential property on or after  
46 January 1, 2018, except in a fiscally constrained county for which application for

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1 comprehensive plan amendment or planned unit development zoning is made by  
2 December 31, 2017. This change was effective July 1, 2017 and applies to  
3 assessments and administrative reviews beginning in 2018. See Chapter 2017-118,  
4 Sections 2 and 8, Laws of Florida (CS/SB 90).

### 5 6 7 **Competent Substantial Evidence for Establishing a Revised Classified** 8 **Use Value**

9 Competent substantial evidence for establishing a revised classified use value, as part  
10 of an administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence  
11 that:

- 12  
13 1. Cumulatively meets the statutory criteria that apply to the classified use valuation of  
14 the petitioned property;
- 15  
16 2. Tends to prove (is probative of) classified use value as of January 1 of the  
17 assessment year under review;
- 18  
19 3. Is sufficiently relevant and credible to be accepted as adequate to support (legally  
20 justify) the conclusion reached; and  
21
- 22 4. Otherwise meets all requirements of law.

### 23 24 25 **The Administrative Review Process for Classified Use Valuations**

26 Below is a sequence of general procedural steps for Boards and special magistrates to  
27 follow in administrative reviews of classified use valuations to fulfill the procedural  
28 requirements of Section 194.301, F.S., and Rule 12D-9.027(3), F.A.C.

29  
30 This sequence of steps applies to: the consideration of evidence, the development of  
31 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

32  
33 *“The board or special magistrate shall not be required to make, at any time during a*  
34 *hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See  
35 Rule 12D-9.025(9), F.A.C.

36  
37 *“The board or special magistrate has the discretion to determine whether to make such*  
38 *determinations during a hearing or to consider the petition and evidence further after the*  
39 *hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.

40  
41 In following this sequence of steps, Boards or special magistrates must also meet the  
42 requirements of Rule 12D-9.025(1), F.A.C., which are the following:

- 43  
44 \* Review the evidence presented by the parties;
- 45  
46 \* Determine whether the evidence presented is admissible;

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- 1  
2 \* Admit the evidence that is admissible; and  
3  
4 \* Identify the evidence presented to indicate that it is admitted or not admitted.  
5  
6 The sequence of general procedural steps presented below is based on Rule 12D-  
7 9.027(3), F.A.C.  
8  
9 1. Consider the admitted evidence presented by the parties.  
10  
11 2. Identify and consider the statutory criteria that apply to the classified use valuation of  
12 the petitioned property.  
13  
14 3. Identify and consider the essential characteristics of the petitioned property based on  
15 the admitted evidence and the statutory criteria that apply to the classified use  
16 valuation of the property.  
17  
18 4. Identify the valuation methodology used by the property appraiser in developing the  
19 classified use valuation of the petitioned property, and consider this valuation  
20 methodology in light of the essential characteristics of the property.  
21  
22 5. Determine whether the admitted evidence proves by a preponderance of the  
23 evidence that the property appraiser's methodology complies with the statutory  
24 criteria that apply to the classified use valuation of the property.  
25  
26 6. Determine whether the property appraiser's classified use valuation methodology is  
27 appropriate and whether the property appraiser established a presumption of  
28 correctness for the assessment.  
29  
30 a) The property appraiser's classified use valuation methodology is not appropriate  
31 and a presumption of correctness is not established unless the admitted  
32 evidence proves by a preponderance of the evidence that the property  
33 appraiser's classified use valuation methodology complies with the statutory  
34 criteria that apply to the classified use valuation of the property.  
35  
36 b) The property appraiser's classified use valuation methodology is appropriate and  
37 the presumption of correctness is established only when the admitted evidence  
38 proves by a preponderance of the evidence that the property appraiser's  
39 classified use valuation methodology complies with the statutory criteria that  
40 apply to the classified use valuation of the property.  
41  
42 7. If the Board or special magistrate determines that a presumption of correctness is  
43 established, the Board or special magistrate must then determine whether the  
44 admitted evidence proves by a preponderance of the evidence that:  
45

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- 1 a) The property appraiser's classified use valuation does not represent classified  
2 use value; or  
3
- 4 b) The property appraiser's classified use valuation is arbitrarily based on valuation  
5 practices that are different from the valuation practices generally applied by the  
6 property appraiser to comparable property within the same county.  
7
- 8 8. If the Board or special magistrate determines that one or both of the conditions  
9 specified under Step 7 exist, the presumption of correctness is overcome.  
10
- 11 9. If the property appraiser does not establish a presumption of correctness, or if the  
12 presumption of correctness is overcome, the Board or special magistrate shall  
13 determine whether the hearing record contains competent, substantial evidence of  
14 classified use value that cumulatively meets the statutory criteria that apply to the  
15 classified use valuation of the property.  
16
- 17 a) If the hearing record contains competent, substantial evidence for establishing a  
18 revised classified use value, the Board or an appraiser special magistrate shall  
19 establish a revised classified use value based only upon such evidence. In  
20 establishing a revised classified use value, the Board or special magistrate is not  
21 restricted to any specific value offered by one of the parties.  
22
- 23 b) If the hearing record lacks competent, substantial evidence for establishing a  
24 revised classified use value, the Board or special magistrate shall remand the  
25 assessment to the property appraiser with appropriate directions for establishing  
26 classified use value. The property appraiser is required to follow these directions.  
27
- 28 10. If the property appraiser establishes a presumption of correctness as described in  
29 Step 6 above and that presumption of correctness is not overcome as described in  
30 Step 7 above, the assessment stands.  
31  
32  
33

### PART 2

#### **Statutory Criteria for Assessed Valuation of Limited Increase Property**

37 The assessed value of certain types of properties can be less than their just value  
38 because of limitations and classifications under the Florida Constitution.  
39

40 "Assessed value" means an annual determination of the value of:

- 41
- 42 \* Homestead property as limited pursuant to Section 4(d), Article VII of the State  
43 Constitution (lesser of 3 percent or percentage change in consumer price index); or  
44
- 45 \* Non-homestead property as limited pursuant to Sections 4(g) and (h), Article VII of  
46 the State Constitution (10 percent).

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**Assessment Increase Limitation for Homestead Real Property**

Beginning in 1995, for homestead property there is a limitation on the annual increase in assessed value that is equal to the lesser of 3 percent or the percent change in the consumer price index. See Rules 12D-8.0061 through 12D-8.0064, F.A.C.

Homestead real property shall be assessed at just value on the January 1 following a change of ownership. See Section 193.155, F.S.

Under Section 193.155(3)(a), F.S., a change of ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, with several enumerated exceptions. More information on this topic is in Module 9.

**Note:** Legislation enacted in 2021 amended section 193.155(4)(b), F.S., to provide that changes, additions, or improvements that replace all or a portion of homestead property, including ancillary improvements, damaged or destroyed by misfortune or calamity shall be assessed upon substantial completion subject to the assessment increase limitation using the homestead property's assessed value as of the January 1 immediately before the date on which the damage or destruction was sustained, when: (a. the square footage of the homestead property as changed or improved does not exceed 110 percent of the square footage of the homestead property before the damage or destruction; or (b. the total square footage of the homestead property as changed or improved does not exceed 1,500 square feet. See Chapter 2021-31, Sections 2 and 7, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable retroactively to assessments made on or after January 1, 2021.

**Assessment Increase Limitation for Non-Homestead Real Property**

Beginning in 2009, for non-homestead property there is a 10 percent limitation on the annual increase in assessed value.

The types of property eligible for the 10 percent cap are provided under Section 193.1554, F.S., and Section 193.1555, F.S.

Section 193.1554, F.S., relates to the assessment of non-homesteaded residential property that contains nine or fewer dwelling units that does not receive a homestead exemption under Section 196.031, F.S., including vacant property zoned and platted for residential use.

Section 193.1555, F.S., relates to residential property with 10 or more units and to non-residential real property.

“Non-residential real property” means real property that is not subject to the assessment limitations set forth in subsection 4(a), (b), (c), (d), or (g), Article VII of the Florida

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1 Constitution. This involves property classified agricultural, high-water recharge, non-  
2 commercial recreational, conservation, and homestead limited increase property.

3  
4 When ownership or control of the property changes, the property is subject to  
5 reassessment at just value.

6  
7 A person or entity that owns non-homestead property subject to receiving the 10  
8 percent assessment increase limitation under Sections 193.1554 or 193.1555, F.S.,  
9 must notify the property appraiser of the county where the property is located of any  
10 change of ownership or control as defined in Sections 193.1554(5) and 193.1555(5),  
11 F.S. See section 193.1556, F.S.

12  
13 Rule 12D-8.00659, F.A.C., (Notice of Change of Ownership or Control of Non-  
14 Homestead Property) contains detailed provisions explaining the change in ownership  
15 and control. Forms are included for the owner to notify the property appraiser as  
16 provided in sections 193.1554 and 193.1555, F.S.

17  
18 **NOTE:** In Orange County Property Appraiser v. Sommers, 84 So.3d 1277 (Fla. 5th DCA  
19 2012), the court held that when residential property changes from homestead to non-  
20 homestead, but ownership does not change, the ten percent cap for non-homestead  
21 property cannot be applied to the assessed value from the previous homestead cap.  
22 Rather, in the year following the change from homestead to non-homestead status, the  
23 new assessed value for the property (as non-homestead) must be equal to just value.  
24 Then, the new assessed value must be the base to which the ten percent cap for non-  
25 homestead property can be applied in future years. This is also addressed in 2012  
26 legislation. See Chapter 2012-193, Sections 6 and 7, Laws of Florida.

27  
28 **Note:** Legislation enacted in 2021 amended section 193.1554(6)(b), F.S., to provide  
29 that changes, additions, or improvements that replace all or a portion of nonhomestead  
30 residential property, including ancillary improvements, damaged or destroyed by  
31 misfortune or calamity shall be assessed upon substantial completion subject to the  
32 assessment increase limitation using the nonhomestead property's assessed value as  
33 of the January 1 prior to the date on which the damage or destruction was sustained,  
34 when (a. the square footage of the property as changed or improved does not exceed  
35 110 percent of the square footage of the property before the damage or destruction, or  
36 (b. the total square footage of the property as changed or improved does not exceed  
37 1,500 square feet. See Chapter 2021-31, Sections 4 and 7, Laws of Florida, (HB 7061),  
38 effective July 1, 2021 and applicable retroactively to assessments made on or after January 1,  
39 2021.

40  
41 **Note:** Legislation enacted in 2021 amended section 193.1555(6)(b), F.S., to provide  
42 that changes, additions, or improvements that replace all or a portion of real property,  
43 including ancillary improvements, damaged or destroyed by misfortune or calamity shall  
44 be assessed upon substantial completion subject to the assessment increase limitation  
45 using the nonresidential real property's assessed value as of the January 1 prior to the  
46 date on which the damage or destruction was sustained, when (a. the square footage of

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1 the property as changed or improved does not exceed 110 percent of the square  
2 footage of the property before the damage or destruction, or (b. the total square footage  
3 of the property as changed or improved does not exceed 1,500 square feet. See Chapter  
4 2021-31, Sections 6 and 7, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable  
5 retroactively to assessments made on or after January 1, 2021.  
6  
7

### 8 **Differences in Administration Between Sections 193.1554 and** 9 **193.1555, F.S.**

10 The administration of Sections 193.1554 and 193.1555, F.S., is similar but has four  
11 main differences. These differences are:

- 12  
13 1. For residential with nine or fewer dwelling units Section 193.1554, F.S., there is no  
14 change in ownership if the transfer is between husband and wife, including a transfer  
15 to a surviving spouse or a transfer due to a dissolution of marriage.  
16

17 \* This provision is not in Section 193.1555, F.S.  
18

- 19 2. For residential with 10 units or more and nonresidential, Section 193.1555, F.S.,  
20 property must be reassessed at just value if there is a “qualifying” improvement,  
21 meaning any substantially completed improvement that increases the just value of  
22 the property by at least 25 percent.  
23

24 \* “Improvement” is an addition or change to land or buildings that increases their  
25 value and is more than a repair or a replacement.  
26

27 \* This provision is not in Section 193.1554, F.S.  
28

- 29 3. Under Section 193.1554, F.S., changes, additions, or improvements include  
30 improvements to common areas or other property that directly benefit the property.  
31

32 \* Such changes are assessed at just value and apportioned among the benefitting  
33 parcels.  
34

35 \* This provision is not in Section 193.1555, F.S.  
36  
37

### 38 **Authority for Administrative Reviews of Assessed Valuations**

39 It is clear under Section 194.301, F.S., amended by HB 521, that the Board or special  
40 magistrate may consider petitions on the current year assessed value. Section  
41 194.301(1), F.S. states:

42  
43 *“... if the appraiser proves by a preponderance of the evidence that the*  
44 *assessment was arrived at by complying with s. 193.011, any other applicable*  
45 *statutory requirements relating to classified use values or assessment caps, ...”*  
46

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1 Section 194.301(2)(a), F.S., states the Board or special magistrate may determine:

2  
3 *“... that the assessed value:*

4 1. *Does not represent the just value of the property after taking into account any*  
5 *applicable limits on annual increases in the value of the property;...”*

6  
7 These provisions refer to the calculation of limited increase property and refer to the  
8 statutory criteria applicable to assessment of such properties. Also, see Rule 12D-  
9 9.027(3)(a), (b), and (d), F.A.C.

10  
11 Thus, it is clear that a petitioner may appeal an assessed valuation for the current year  
12 under the statutory criteria pertaining to calculation of assessed value.

### 13 14 **Competent Substantial Evidence for Establishing a Revised Assessed Value**

15  
16 Competent substantial evidence for establishing a revised assessed value, as part of an  
17 administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:

- 18  
19  
20 1. Cumulatively meets the statutory criteria that apply to the assessed valuation of the  
21 petitioned property;  
22  
23 2. Tends to prove (is probative of) assessed value as of January 1 of the assessment  
24 year under review;  
25  
26 3. Is sufficiently relevant and credible to be accepted as adequate to support (legally  
27 justify) the conclusion reached; and  
28  
29 4. Otherwise meets all requirements of law.

### 30 31 **The Administrative Review Process for Assessed Valuations**

32  
33 Below is a sequence of general procedural steps for Boards and special magistrates to  
34 follow in administrative reviews of assessed valuations of limited increase property to  
35 fulfill the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(3),  
36 F.A.C.

37  
38 This sequence of steps applies to: the consideration of evidence, the development of  
39 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

40  
41 *“The board or special magistrate shall not be required to make, at any time during a*  
42 *hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See  
43 Rule 12D-9.025(9), F.A.C.  
44

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1 “The board or special magistrate has the discretion to determine whether to make such  
2 determinations during a hearing or to consider the petition and evidence further after the  
3 hearing and then make such determinations.” See Rule 12D-9.025(9), F.A.C.  
4

5 In following this sequence of steps, Boards or special magistrates must also meet the  
6 requirements of Rule 12D-9.025(1), F.A.C., listed following:  
7

- 8 a) Review the evidence presented by the parties;
- 9
- 10 b) Determine whether the evidence presented is admissible;
- 11
- 12 c) Admit the evidence that is admissible; and
- 13
- 14 d) Identify the evidence presented to indicate that it is admitted or not admitted.
- 15

16 The sequence of general procedural steps presented below is based on Rule 12D-  
17 9.027(3), F.A.C.  
18

- 19 1. Consider the admitted evidence presented by the parties.  
20
- 21 2. Identify and consider the statutory criteria that apply to the assessed valuation of the  
22 petitioned property.  
23
- 24 3. Identify and consider the essential characteristics of the petitioned property based on  
25 the admitted evidence and the statutory criteria that apply to the assessed valuation  
26 of the property.  
27
- 28 4. Identify the valuation methodology used by the property appraiser in developing the  
29 assessed valuation of the petitioned property, and consider this valuation  
30 methodology in light of the essential characteristics of the property.  
31
- 32 5. Determine whether the admitted evidence proves by a preponderance of the  
33 evidence that the property appraiser’s methodology complies with the statutory  
34 criteria that apply to the assessed valuation of the property.  
35
- 36 6. Determine whether the property appraiser’s assessed valuation methodology is  
37 appropriate and whether the property appraiser established a presumption of  
38 correctness for the assessment.  
39
- 40 a) The property appraiser’s assessed valuation methodology is not appropriate and  
41 a presumption of correctness is not established unless the admitted evidence  
42 proves by a preponderance of the evidence that the property appraiser’s  
43 assessed valuation methodology complies the statutory criteria that apply to the  
44 assessed valuation of the property.  
45

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- 1 b) The property appraiser's assessed valuation methodology is appropriate and the  
2 presumption of correctness is established only when the admitted evidence  
3 proves by a preponderance of the evidence that the property appraiser's  
4 assessed valuation methodology complies with the statutory criteria that apply to  
5 the assessed valuation of the property.  
6
- 7 7. If the Board or special magistrate determines that a presumption of correctness is  
8 established, the Board or special magistrate must then determine whether the  
9 admitted evidence proves by a preponderance of the evidence that:  
10
- 11 a) The property appraiser's assessed valuation does not represent assessed value;  
12 or  
13
- 14 b) The property appraiser's assessed valuation is arbitrarily based on valuation  
15 practices that are different from the valuation practices generally applied by the  
16 property appraiser to comparable property within the same county.  
17
- 18 8. If the Board or special magistrate determines that one or both of the conditions  
19 specified under Step 7 exist, the presumption of correctness is overcome.  
20
- 21 9. If the property appraiser does not establish a presumption of correctness, or if the  
22 presumption of correctness is overcome, the Board or special magistrate shall  
23 determine whether the hearing record contains competent, substantial evidence of  
24 assessed value that cumulatively meets the statutory criteria that apply to the  
25 assessed valuation of the property.  
26
- 27 a) If the hearing record contains competent, substantial evidence for establishing a  
28 revised assessed value, the Board or an appraiser special magistrate shall  
29 establish a revised assessed value based only upon such evidence. In  
30 establishing a revised assessed value, the Board or special magistrate is not  
31 restricted to any specific value offered by one of the parties.  
32
- 33 b) If the hearing record lacks competent, substantial evidence for establishing a  
34 revised assessed value, the Board or special magistrate shall remand the  
35 assessment to the property appraiser with appropriate directions for establishing  
36 assessed value. The property appraiser is required to follow these directions.  
37
- 38 10. If the property appraiser establishes a presumption of correctness as described in  
39 Step 6 above and that presumption of correctness is not overcome as described in  
40 Step 7 above, the assessment stands.

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## Module 8: Administrative Reviews of Tangible Personal Property Just Valuations

33 **Training Module 8 addresses the following topics:**

- 34 • Statutory Law Beginning in 2009 (See HB 521)
- 35 • Standard of Proof for Administrative Reviews
- 36 • Scope of Authority for Administrative Reviews
- 37 • Legal Limitations on Administrative Reviews
- 38 • The Florida Tangible Personal Property Appraisal Guidelines
- 39 • Florida Information on Appraisal Development
- 40 • Definition of Tangible Personal Property (TPP)
- 41 • Exemptions for Tangible Personal Property
- 42 • Requirement for Taxpayers to File TPP Returns
- 43 • The Eight Factors of Just Valuation in Section 193.011, F.S.
- 44 • The Seven Overarching Standards for Valid Just Valuations
- 45 • Petitioner Not Required to Present Opinion or Estimate of Value
- Presentation of Evidence by the Parties
- Evaluation of Evidence by the Board or Special Magistrate
- Sufficiency of Evidence
- Requirements for Establishing a Presumption of Correctness
- Requirements for Overcoming a Presumption of Correctness
- Establishing a Revised Just Value or Remanding the Assessment
- Competent Substantial Evidence for Establishing a Revised Just Value
- Establishment of Revised Just Values in Administrative Reviews
- Sequence of General Procedural Steps
- Operation of the Eighth Criterion Under Florida Law
- The Eighth Criterion in Reviews of Tangible Personal Property

33 **Learning Objectives**

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

- 35
- 36 • Identify the 2009 changes enacted in statutory law (HB 521)
- 37 • Distinguish between who does appraisal development and who does NOT
- 38 • Identify legal provisions on the Tangible Personal Property Appraisal Guidelines
- 39 • Identify legal provisions that represent limitations on the discretion of property
- 40 appraisers
- 41 • Recognize that the factor in Section 193.011(8), F.S., must be properly considered in
- 42 the just valuation of tangible personal property (TPP)
- 43 • Recognize the four components of the definition of personal property
- 44 • Identify how the Florida Supreme Court has addressed intangible personal property
- 45 in the just valuation of tangible personal property

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- 1 • Recognize the requirement that personal property types other than TPP must be
- 2 excluded from just valuations of TPP
- 3 • Distinguish between appraisal development and administrative reviews
- 4 • Recognize and apply the scope of authority for administrative reviews
- 5 • Identify the items that a Board or special magistrate may consider in addition to
- 6 admitted evidence
- 7 • Recognize and apply the definition of tangible personal property (TPP)
- 8 • Identify the requirements for filing a TPP return (Form DR-405)
- 9 • Recognize the types of information required on a filed return (Form DR-405)
- 10 • Identify how the property appraiser may use a filed TPP return
- 11 • Recognize the link between the requirement to file a TPP return with the property
- 12 appraiser and the right to file a petition with the Board
- 13 • Identify the eight factors of just valuation in Section 193.011, F.S.
- 14 • Recognize the legal standards for consideration of the just valuation factors
- 15 • Identify the provisions of Section 193.016, F.S., regarding the property appraiser's
- 16 consideration of the previous year's Board-adjusted assessment
- 17 • Recognize how the Florida Supreme Court has addressed Section 193.016, F.S.
- 18 • Identify the applicable standard of proof, its definition, and how it is applied
- 19 • Identify standards of proof that do NOT apply in administrative reviews
- 20 • Recognize that a petitioner is NOT required to present an opinion of value
- 21 • Understand the order of presentation of evidence
- 22 • Identify and apply the steps for evaluating evidence in administrative reviews
- 23 • Recognize and apply the provisions for ruling on the admissibility of evidence
- 24 • Identify and apply the definitions of relevant evidence and credible evidence
- 25 • Recognize and apply the standards for determining the sufficiency of evidence
- 26 • Identify types of information that are NOT sufficient evidence for establishing a
- 27 presumption of correctness
- 28 • Recognize the requirements for establishing a presumption of correctness
- 29 • Recognize the requirements for overcoming a presumption of correctness
- 30 • Identify the alternative actions required when a presumption of correctness was not
- 31 established, or was established but later was overcome
- 32 • Identify and apply the elements of the definition of competent substantial evidence
- 33 for establishing a revised assessment
- 34 • Recognize the conditions under which a Board or special magistrate is required to
- 35 establish a revised just value
- 36 • Identify legal limitations on administrative reviews
- 37 • Apply the sequence of general procedural steps for administrative reviews of just
- 38 valuations
- 39 • Identify when the Board or special magistrate is required or is NOT required to make
- 40 determinations such as findings, conclusions, or decisions
- 41 • Recognize that the factor in Section 193.011(8), F.S., must be properly considered in
- 42 administrative reviews of just valuations of tangible personal property, regardless of
- 43 whether an actual sale of the property has occurred

44  
45  
46  
47

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

39  
40 *This 2009 legislation lowered the standard of proof for assessment challenges, greatly*  
41 *increased the level of diligence for developing and reporting just valuations, and added*  
42 *the following four new determinative standards for developing, reporting, and reviewing*  
43 *just valuations: 1) compliance with professionally accepted appraisal practices; 2)*  
44 *avoidance of arbitrarily different appraisal practices within groups of comparable*  
45 *property within the same county; 3) avoidance of superseded case law; and 4) correct*  
46 *application of an appropriate appraisal methodology. These changes are explained in a*  
47 *following section titled "The Seven Overarching Standards for Valid Just Valuations."*

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1  
2 The law now provides a lower standard of proof, called “preponderance of the  
3 evidence,” for determining whether the assessment is incorrect.

4  
5 \* “Preponderance of the evidence” is a standard (level) of proof that means “greater  
6 weight of the evidence” or “more likely than not.”

7  
8 In determining whether the assessment is incorrect, Boards and special magistrates  
9 must not use any standard of proof other than the preponderance of the evidence  
10 standard, as provided in Section 194.301, F.S., as amended by Chapter 2009-121,  
11 Laws of Florida (House Bill 521).

12  
13 Higher standards of proof no longer apply. The higher standard of proof called “clear  
14 and convincing evidence” no longer applies in the administrative review of assessments  
15 and must not be used by Boards or special magistrates. See Section 194.301, F.S., as  
16 amended by Chapter 2009-121, Laws of Florida (House Bill 521).

17  
18 *“It is the express intent of the Legislature that a taxpayer shall never have the burden of*  
19 *proving that the property appraiser’s assessment is not supported by any reasonable*  
20 *hypothesis of a legal assessment.”* See Subsection 194.3015(1), F.S., as created by Chapter 2009-  
21 121, Laws of Florida (House Bill 521).

### 22 23 24 **Standard of Proof for Administrative Reviews**

25 In administrative reviews, Boards or special magistrates must consider admitted  
26 evidence and then compare the weight of the evidence to a “standard of proof” to make  
27 a determination on an issue under review.

28  
29 Generally, the term “evidence” means something (including testimony, documents, and  
30 tangible objects) that tends to prove or disprove the existence of a disputed fact. See  
31 *Black’s Law Dictionary, Eighth Edition, page 595.*

32  
33 “Standard of proof” means the level of proof needed by the Board or special magistrate  
34 to reach a particular conclusion. See Rule 12D-9.027(5), F.A.C.

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

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

43  
44 “Greater weight of the evidence” means the more persuasive and convincing force and  
45 effect of the entire evidence in the case. See Florida Standard Civil Jury Instructions,  
46 approved for publication by the Florida Supreme Court.

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1 The Board or special magistrate must determine whether the admitted evidence is  
2 sufficiently relevant and credible to reach the “preponderance of the evidence” standard  
3 of proof.

4  
5 This standard of proof is the scale by which the Board or special magistrate measures  
6 the weight (relevance and credibility) of the admitted evidence in making a  
7 determination.

8  
9

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

11 The administrative review of just valuations is performed by Boards or special  
12 magistrates under Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10, and  
13 12D-16, F.A.C.; and other provisions of Florida law.

14  
15 The administrative review process performed by Boards and special magistrates is  
16 separate and different from the mass appraisal development process performed by  
17 property appraisers.

18  
19 In administrative reviews, Boards and special magistrates are not authorized to perform  
20 appraisal development and must not perform appraisal development.

21  
22 In administrative reviews, Boards and special magistrates are not authorized to perform  
23 any independent factual research into attributes of the subject property or any other  
24 property.

25  
26 Boards and special magistrates must follow the provisions of law on the administrative  
27 review of assessments. See Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10,  
28 and 12D-16, F.A.C.; and other provisions of Florida law.

29  
30 In establishing revised just values when required by law, Boards and special  
31 magistrates are bound by the same standards and practices as property appraisers. See  
32 Rule 12D-10.003(1), F.A.C., treated favorably in Bystrom v. Equitable Life Assurance Society,  
33 416 So.2d 1133 (Fla. 3d DCA 1982), and see Section 194.301, F.S., as amended by Chapter  
34 2009-121, Laws of Florida (House Bill 521).

35  
36 \* However, when observing this requirement, Boards and special magistrates must  
37 act within their scope of authority.

38  
39 The effective date of administrative review is January 1 each year, and the property  
40 interest to be reviewed is the unencumbered fee simple estate.

41  
42 The Board or special magistrate has no authority to develop original just valuations of  
43 property and may not take the place of the property appraiser, but shall revise the  
44 assessment when required under Florida law. See Rule 12D-10.003(1), F.A.C., and Section  
45 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

46

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

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

8  
9 The Board or special magistrate is required to revise the assessment under the  
10 conditions specified in Section 194.301, F.S., as amended by Chapter 2009-121, Laws  
11 of Florida (House Bill 521). These conditions are described in detail later in this module.

12  
13 *“In establishing a revised just value, the board or special magistrate is not restricted to  
14 any specific value offered by one of the parties.”* See Rule 12D-9.027(2)(b)3.a., F.A.C.

15  
16 \* Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding  
17 that the reviewing judge could arrive at a value that was different from either of the values  
18 presented by the parties when the judge’s value was based on competent substantial evidence  
19 in the record.

20  
21 The Board or special magistrate is authorized to make calculations, and to make an  
22 adjustment to the property appraiser’s value based on competent substantial evidence  
23 of just value in the record. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws  
24 of Florida (House Bill 521), and see Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977),  
25 stating that when the record contains competent substantial evidence of value the court may  
26 make necessary value calculations or adjustments based on such evidence.

27  
28 If the hearing record does not contain competent substantial evidence of just value, the  
29 Board or special magistrate cannot substitute its own independent judgment. See Section  
30 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see  
31 Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977), stating that in the absence of  
32 competent substantial evidence of value the court cannot substitute its own independent  
33 judgment.

34  
35 The Board or special magistrate has no authority to adjust assessments across-the-  
36 board. Their authority to review just valuations is limited to the review of individual  
37 petitions filed. See Spooner v. Askew, 345 So.2d 1055 (Fla. 1976).

38  
39 The Board has the limited function of reviewing and correcting individual assessments  
40 developed by the property appraiser. See Bath Club, Inc. v. Dade County, 394 So.2d 110  
41 (Fla. 1981).

42  
43 The Board has no authority to review, on its own volition, a decision of the property  
44 appraiser to deny an exemption. See Redford v. Department of Revenue, 478 So.2d 808  
45 (Fla. 1985).

46

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1 *“The powers, authority, duties and functions of the board, insofar as they are*  
2 *appropriate, apply equally to real property and tangible personal property (including*  
3 *taxable household goods).” See Rule 12D-10.003(2), F.A.C.*

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

8  
9 In addition to admitted evidence, Boards and special magistrates are authorized to  
10 consider only the following items in administrative reviews.

- 11 1. Legal advice from the Board legal counsel;
- 12 13
- 14 2. Information contained or referenced in the Department’s Uniform Policies and  
15 Procedures Manual and Accompanying Documents;
- 16
- 17 3. Information contained or referenced in the Department’s training for value  
18 adjustment boards and special magistrates; and
- 19
- 20 4. Professional texts that pertain only to professionally accepted appraisal practices  
21 that are not inconsistent with Florida law.
- 22
- 23

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

24  
25 No evidence shall be considered by the Board or special magistrate except when  
26 presented during the time scheduled for the petitioner’s hearing, or at a time when the  
27 petitioner has been given reasonable notice. See Subsection 194.034(1)(c), F.S. Also, see  
28 Rule 12D-9.025(4)(a), F.A.C.

29  
30 Other provisions of law address the responsibilities of petitioners and property  
31 appraisers that may affect the review and consideration of evidence at a hearing.

32  
33 \* The Board or special magistrate must consult with the Board legal counsel on any  
34 questions about the review and consideration of evidence.

35  
36 In administrative reviews, the Board or special magistrate shall not consider the tax  
37 consequences of the valuation of a specific property. See Rule 12D-10.003(1), F.A.C.

38  
39 The Board or special magistrate has no power to grant relief by adjusting the value of a  
40 property on the basis of hardship of a particular taxpayer. See Rule 12D-10.003(1), F.A.C.

41  
42 Unless the provisions of Section 193.016, F.S., apply, a just valuation challenge must  
43 stand or fall on its own validity, unconnected with the just value of any prior or  
44 subsequent year. See Keith Investments, Inc. v. James, 220 So.2d 695 (Fla. 4th DCA 1969);  
45 Also, see Dade County v. Tropical Park, Inc., 251 So.2d 551 (Fla. 3rd DCA 1971).

46

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1 Unless the provisions of Section 193.016, F.S., apply, the prior year's just value is not  
2 competent evidence of just value in the current year, even when there is no evidence  
3 showing a change in circumstances between the two dates of assessment. See Simpson  
4 v. Merrill, 234 So.2d 350 (Fla. 1970).

5  
6 An appraisal report shall not be submitted as evidence in a value adjustment board  
7 proceeding in any tax year in which the person who performed the appraisal serves as a  
8 special magistrate to that county value adjustment board for the same tax year.  
9 Accordingly, in that tax year the board and any special magistrate in that county shall  
10 not admit such appraisal report into evidence and shall not consider any such appraisal  
11 report. See Rule 12D-9.025(4)(g), F.A.C.

### 14 **The Florida Tangible Personal Property Appraisal Guidelines**

15 Below are provisions from Section 195.032, Florida Statutes, describing the Tangible  
16 Personal Property Appraisal Guidelines.

- 18 1. *"The standard measures of value shall provide guidelines for the valuation of*  
19 *property and methods for property appraisers to employ in arriving at the just*  
20 *valuation of particular types of property consistent with section 193.011..."*
- 22 2. *"The standard measures of value shall assist the property appraiser in the valuation*  
23 *of property and be deemed prima facie correct, but shall not be deemed to establish*  
24 *the just value of any property."*

25  
26 See Rule 12D-51.002, Florida Administrative Code, for more information on the  
27 Tangible Personal Property (TPP) Appraisal Guidelines.

#### 29 **NOTICE:**

#### 30 **With the Exceptions Noted Below, These Guidelines Are Out-of-Date**

31 The existing Florida Tangible Personal Property Appraisal Guidelines were adopted in  
32 1997 and, with the exceptions noted below, are now out-of-date due to various changes  
33 in law. For example, in a 2007 decision, the U.S. Supreme Court held that appraisal is  
34 an "applied science" (not an art) and that appraisal methodology must be reviewed in ad  
35 valorem tax valuations. In another example, 2009 changes in sections 194.301 and  
36 194.3015, F.S., substantially increased the legal standards for developing, reporting,  
37 and reviewing just valuations and also enacted the following additional determinative  
38 standards for just valuations: 1) compliance with professionally accepted appraisal  
39 practices; 2) avoidance of arbitrarily different appraisal practices within groups of  
40 comparable property within the same county; 3) avoidance of superseded case law; and  
41 4) correct application of an appropriate appraisal methodology. Accordingly, with the  
42 exceptions noted below, the 1997 guidelines should not be used as a standard for just  
43 valuation development, reporting, or review. The Department has initiated the legal and  
44 professional research for updating the guidelines, which will include public notices and  
45 opportunities for public review and comment in an open and transparent process.

#### 47 **TPP Guideline Portions Excluded from the Notice Above**

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1 The existing TPP Guidelines include attachments. Of these, Attachments B, C, D, F,  
2 and H, along with related narrative described below, are excluded from the notice  
3 above. A post-2009 Florida Appellate Court decision (March 1, 2019) found the use of  
4 appraisal information from Attachments B, C, and D to be consistent (to a limited extent)  
5 with professionally accepted appraisal practices; the Court qualified this finding by  
6 stating it is not part of the Court's holding. Also, Attachments F and H in the existing  
7 TPP guidelines are duly adopted forms that are up-to-date. Further, the narrative in the  
8 1997 guidelines, relating to the use of Attachments B, C, D, F, and H, is excluded from  
9 the notice above to the extent such narrative is consistent with professionally accepted  
10 appraisal practices and appropriate appraisal methodologies. In the existing guidelines,  
11 such narrative is on pages 35, 36, 40-43, and 45 (relating to the use of Attachments B,  
12 C, and D) and on pages 31, 32, 34, 44, and 45 (relating to the use of Attachments F and  
13 H). The exceptions described above are subject to change as the process of updating  
14 the TPP guidelines evolves and more information becomes available.

### **NOTICE:**

#### **The Florida Tangible Personal Property Appraisal Guidelines are Out-of-Date**

19 ~~The Florida Tangible Personal Property (TPP) Appraisal Guidelines, developed under~~  
20 ~~sections 195.002, 195.032, and 195.062, F.S., were last revised in 1997 and are now~~  
21 ~~out-of-date due to changes in law. The 1997 guidelines do NOT reflect the impacts of~~  
22 ~~the landmark 2009 enactments in sections 194.301 and 194.3015. Pertinent to the~~  
23 ~~guidelines, the 2009 legislation greatly increased the level of diligence required for~~  
24 ~~developing and reporting just valuations and also established four additional,~~  
25 ~~determinative standards for developing, reporting, and reviewing just valuations. These~~  
26 ~~four additional standards are: 1) compliance with professionally accepted appraisal~~  
27 ~~practices; 2) avoidance of arbitrarily different appraisal practices within groups of~~  
28 ~~comparable property within the same county; 3) avoidance of superseded case law; and~~  
29 ~~4) correct application of an appropriate appraisal methodology. The 1997 TPP appraisal~~  
30 ~~guidelines cannot be used as any sort of standard for the property appraiser's~~  
31 ~~development and reporting of just valuations or for the VAB's review of just valuations.~~  
32 ~~Rather, the current determinative legal standards to be used for just valuation~~  
33 ~~development, reporting, and review are listed under the seven overarching standards~~  
34 ~~for valid just valuations presented below herein. Such standards reflect the 2009~~  
35 ~~enactments involving sections 194.301, 193.011, and 194.3015, F.S.~~

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

39  
40 A copy of the 1997 TPP guidelines is available at:

41 [http://floridarevenue.com/dor/property/tpg/https://floridarevenue.com/property/Do](http://floridarevenue.com/dor/property/tpg/https://floridarevenue.com/property/Documents/TPPGuidelines.pdf)  
42 [cuments/TPPGuidelines.pdf](http://floridarevenue.com/dor/property/tpg/https://floridarevenue.com/property/Documents/TPPGuidelines.pdf)

### **Florida Information on Appraisal Development**

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

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1  
2 More information on Florida's standards for appraisal development is in a following  
3 section titled "The Seven Overarching Standards for Valid Just Valuations."

4  
5 Section 4, Article VII, of the Florida Constitution, requires a just valuation of all property  
6 for ad valorem taxation, with certain conditions.

7  
8 Florida's constitution has "*delegated to the Legislature the responsibility for deciding the*  
9 *specifics of how that 'just valuation' would be secured.*" Sunset Harbour Condominium  
10 Ass'n v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Collier County v. State, 733 So.2d  
11 1012, 1019 (Fla. 1999).

12  
13 The Florida Legislature has effectuated the constitutional requirement for just valuations  
14 by specifying just valuation standards in several statutes, as explained below in a  
15 section titled "The Seven Overarching Standards for Valid Just Valuations."

16  
17 Regarding section 193.011, in 1963 the Legislature enacted the initial version of the first  
18 seven just valuation factors, effective January 1, 1964. See Chapter 63-250, Laws of  
19 Florida, creating Section 193.021, F.S., which was re-numbered in 1969 as Section 193.011,  
20 F.S., by Chapter 69-55, Laws of Florida.

21  
22 In 1965, the Florida Supreme Court held that just value was synonymous with fair  
23 market value and defined fair market value as: "*the amount a purchaser willing but not*  
24 *obliged to buy, would pay to one willing but not obliged to sell.*" See Walter v. Schuler, 176  
25 So.2d 81 (Fla. 1965).

26  
27 \* Neither the term "fair market value" nor the term "market value" appears in the  
28 Florida Constitution. The term "just valuation" appears in the constitution once and  
29 the term "just value" appears in the constitution a total of 22 times, all of which terms  
30 appear in Article VII pertaining to the valuation of property for ad valorem taxation.

31  
32 \* NOTE: The eighth just valuation criterion did not exist at the time of Walter v.  
33 Schuler. The Legislature can override decisional law. See Dept. of Environmental  
34 Protection v. Contractpoint Florida Parks, 986 So.2d 1260, 1269 (Fla. 2008).

35  
36 Then, in 1967, the legislature added the eighth just valuation criterion (net proceeds of  
37 sale) as a new Subsection 193.021(8), Florida Statutes. See Chapter 67-167, Laws of  
38 Florida, creating Subsection 193.021(8), F.S., which was re-numbered in 1969 as Subsection  
39 193.011(8), F.S., by Chapter 69-55, Laws of Florida.

40  
41 Subsection 193.011(8), F.S., generally known as the "eighth criterion," was last  
42 amended in 1979 and is presented below in its entirety.

43  
44 "*The net proceeds of the sale of the property, as received by the seller, after deduction*  
45 *of all of the usual and reasonable fees and costs of the sale, including the costs and*  
46 *expenses of financing, and allowance for unconventional or atypical terms of financing*  
47 *arrangements. When the net proceeds of the sale of any property are utilized, directly or*

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1 *indirectly, in the determination of just valuation of realty of the sold parcel or any other*  
2 *parcel under the provisions of this section, the property appraiser, for the purposes of*  
3 *such determination, shall exclude any portion of such net proceeds attributable to*  
4 *payments for household furnishings or other items of personal property.”*  
5

6 \* The eighth criterion must be properly considered in the just valuation of tangible  
7 personal property. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd  
8 DCA 2000) review denied 780 So.2d 916 (Fla. 2001).  
9

10 NOTE: More information on the eighth criterion is presented later in this section and in  
11 the last two sections of this module.  
12

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

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

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

27 The eighth criterion provides for the deduction of personal property in arriving at net  
28 proceeds of sale of real property, but does not specifically address the deduction of  
29 personal property to arrive at net proceeds of sale of tangible personal property.  
30

31 \* However, the Florida Supreme Court found that it is unconstitutional for a property  
32 appraiser to include intangible personal property value in the just valuation of  
33 tangible personal property. See Havill v. Scripps Howard Cable Co., 742 So.2d 210 (Fla.  
34 1998).  
35

36 \* Given this decision and the statutory definition of personal property that includes  
37 intangible personal property, the personal property component of the eighth criterion  
38 must be properly considered in the just valuation of tangible personal property.  
39

40 The just value of personal property types other than tangible personal property must be  
41 excluded from just valuations of tangible personal property.  
42  
43

### **Definition of Tangible Personal Property (TPP)**

44 *“Tangible personal property’ means all goods, chattels, and other articles of value (but*  
45 *does not include the vehicular items enumerated in s. 1(b), Art. VII of the State*  
46 *Constitution and elsewhere defined) capable of manual possession and whose chief*  
47

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1 *value is intrinsic to the article itself. ‘Construction work in progress’ consists of those*  
2 *items of tangible personal property commonly known as fixtures, machinery, and*  
3 *equipment when in the process of being installed in new or expanded improvements to*  
4 *real property and whose value is materially enhanced upon connection or use with a*  
5 *preexisting, taxable, operational system or facility. Construction work in progress shall*  
6 *be deemed substantially completed when connected with the preexisting, taxable,*  
7 *operational system or facility. Inventory and household goods are expressly excluded*  
8 *from this definition.” See Subsection 192.001(11)(d), F.S.*

### **Exemptions for Tangible Personal Property**

12 Chapter 196, Florida Statutes, exempts certain property from the TPP tax.

14 Exempt property may be subject to TPP return filing requirements.

16 TPP may be exempt only if it meets the requirements for an exemption set forth in  
17 Chapter 196, Florida Statutes.

19 NOTE: For those interested, more information on exemptions for tangible personal  
20 property is presented in Module 9 of this training. However, appraiser special  
21 magistrates are not required to complete Module 9 of this training.

### **Requirement for Taxpayers to File TPP Returns**

25 A TPP return (Form DR-405) is a Florida Department of Revenue form that owners of  
26 certain TPP are required by law to complete and file with the property appraiser each  
27 year by April 1st, unless a lawful extension has been granted.

29 Form DR-405 can be viewed on the Department’s website at the following link:

30 <http://floridarevenue.com/dor/property/tpp>/<https://floridarevenue.com/property/Documents/dr405.pdf>

33 Owners of TPP valued at \$25,000 or less may receive a filing waiver from the property  
34 appraiser upon filing an initial return.

36 Florida law provides for financial penalties when TPP returns are not lawfully filed. See  
37 Sections 193.072 and 196.183, F.S.

39 The TPP return contains information that the property appraiser may consider in arriving  
40 at just value.

42 The TPP return is the property appraiser’s primary data collection method for TPP  
43 characteristics.

45 Other data collection methods, such as physical inspections, may be used when  
46 necessary.

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1 A TPP assessment may not be contested with the Board unless the required TPP return  
2 was timely filed with the property appraiser. The term “timely filed” means filed by the  
3 deadline established in section 193.062, F.S., or before the expiration of any extension  
4 granted under section 193.063, F.S. If notice is mailed pursuant to section  
5 193.073(1)(a), F.S., a complete return must be submitted under section 193.073(1)(a),  
6 F.S., for the assessment to be contested. See Subsection 194.034(1)(j), F.S.

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

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

14  
15 Section 193.011, Florida Statutes, provides the following on just valuation.

16  
17 ***“Factors to consider in deriving just valuation.*** – *In arriving at just valuation as*  
18 *required under s. 4, Art. VII of the State Constitution, the property appraiser shall take*  
19 *into consideration the following factors:*

20  
21 *(1) The present cash value of the property, which is the amount a willing purchaser*  
22 *would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash*  
23 *or the immediate equivalent thereof in a transaction at arm's length;*

24  
25 *(2) The highest and best use to which the property can be expected to be put in the*  
26 *immediate future and the present use of the property, taking into consideration the*  
27 *legally permissible use of the property, including any applicable judicial limitation, local*  
28 *or state land use regulation, or historic preservation ordinance, and any zoning*  
29 *changes, concurrency requirements, and permits necessary to achieve the highest and*  
30 *best use, and considering any moratorium imposed by executive order, law, ordinance,*  
31 *regulation, resolution, or proclamation adopted by any governmental body or agency or*  
32 *the Governor when the moratorium or judicial limitation prohibits or restricts the*  
33 *development or improvement of property as otherwise authorized by applicable law.*  
34 *The applicable governmental body or agency or the Governor shall notify the property*  
35 *appraiser in writing of any executive order, ordinance, regulation, resolution, or*  
36 *proclamation it adopts imposing any such limitation, regulation, or moratorium;*

37  
38 *(3) The location of said property;*

39  
40 *(4) The quantity or size of said property;*

41  
42 *(5) The cost of said property and the present replacement value of any improvements*  
43 *thereon;*

44  
45 *(6) The condition of said property;*

46  
47 *(7) The income from said property; and*

1  
2 (8) *The net proceeds of the sale of the property, as received by the seller, after*  
3 *deduction of all of the usual and reasonable fees and costs of the sale, including the*  
4 *costs and expenses of financing, and allowance for unconventional or atypical terms of*  
5 *financing arrangements. When the net proceeds of the sale of any property are utilized,*  
6 *directly or indirectly, in the determination of just valuation of realty of the sold parcel or*  
7 *any other parcel under the provisions of this section, the property appraiser, for the*  
8 *purposes of such determination, shall exclude any portion of such net proceeds*  
9 *attributable to payments for household furnishings or other items of personal property.”*

10  
11 Section 193.011 is now part of the determinative just valuation standards provided in  
12 sections 194.301 and 194.3015 and in other applicable law, as explained in the next  
13 section titled “The Seven Overarching Standards for Valid Just Valuations.”  
14  
15

## 16 **The Seven Overarching Standards for Valid Just Valuations**

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

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

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

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

36 These seven overarching standards are listed and described below.

### 37 38 **1. Compliance with Professionally Accepted Appraisal Practices for Appraisal** 39 **Development and Appraisal Reporting**

40  
41 The section 194.301 standard of professionally accepted appraisal practices applies to  
42 the entire appraisal process that includes both appraisal development and appraisal  
43 reporting, each of which are addressed separately below.  
44

45 Professionally accepted appraisal practices require appraisers to recognize and comply  
46 with current laws and regulations that apply to the appraiser or to the appraisal

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1 assignment. See Competency Rule, *Uniform Standards of Professional Appraisal Practice*,  
2 *2020-2021 Edition* (USPAP), page 11.

3  
4 Compliance with professionally accepted appraisal practices encompasses compliance  
5 with all other law comprising the seven overarching standards.

6  
7 Professionally accepted appraisal practices comprise a voluminous set of practices set  
8 forth in thousands of pages of professional appraisal references. The current edition of  
9 USPAP is a set of standards consisting of 58 pages that address both appraisal and  
10 appraisal review for all types of property.

11  
12 Thus, the two are not the same thing because the professionally accepted appraisal  
13 practices standard is much more extensive and detailed than USPAP.

14  
15 While USPAP is a useful source of information on professionally accepted appraisal  
16 practices, it not a substitute for such practices.

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

17  
18  
19  
20  
21 In the context of Florida ad valorem tax law, appraisal development is the act, by an  
22 appraiser, of applying the appraisal process to arrive at valid just valuations.

23  
24 “Relevant characteristics” is a core appraisal term defined as: “*features that may*  
25 *affect a property’s value or marketability such as legal, economic, or physical*  
26 *characteristics.*” See Definitions, *Uniform Standards of Professional Appraisal Practice*,  
27 *2020-2021 Edition* (Washington, DC: The Appraisal Foundation), page 5.

28  
29 Under professionally accepted appraisal practices, the three categories of appraisal  
30 data that must be applied in the appraisal process are: legal, physical, and economic.  
31 See Standard 5, Mass Appraisal Development, *Uniform Standards of Professional Appraisal*  
32 *Practice, 2020-2021 Edition*, page 33. Also, see section 193.1142(1)(c)2., F.S.

33  
34 Appraisers are required “*to use due diligence and due care.*” See Competency Rule,  
35 *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition*, page 11.

36  
37 An appraiser’s valuation must be “*based on careful scrutiny of all the data available.*”  
38 See *CSX Transp., Inc. v. Ga. Bd. of Equalization*, 552 U.S. 9 (2007).

39  
40 Appraisers have the “*...responsibility to obtain knowledge of all pertinent facts and*  
41 *circumstances that can be acquired with diligent inquiry and search.*” See *Uniform*  
42 *Appraisal Standards for Federal Land Acquisition 2016* (Appraisal Foundation), page 204.

43  
44 “*The appraiser must be diligent in data collection and competently apply the accepted*  
45 *methods and techniques of the appraisal profession...*” See *Uniform Appraisal Standards*  
46 *for Federal Land Acquisition 2016* (Appraisal Foundation), page 203.

47

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

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

- 6  
7 • Each of the three approaches has variants, depending on: 1) the legal, physical, and  
8 economic attributes of the subject property; 2) the availability of appraisal data; and  
9 3) the appropriate appraisal methodology.

10  
11 Generally, property appraisers use mass appraisal techniques to develop just valuations  
12 each year, but property appraisers may also use single-property appraisal techniques.

13  
14 When properly applied in compliance with all requirements of law, both mass appraisal  
15 and single-property appraisal are professionally accepted appraisal practices.

16  
17 It is implicit in mass appraisal that, even when properly specified and calibrated mass  
18 appraisal models are used, some individual value conclusions will not meet standards of  
19 reasonableness, consistency, and accuracy. See Standard 5, Mass Appraisal Development,  
20 *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition, page 37.*

21  
22 Regardless of the appraisal approach or technique used to develop a particular just  
23 value, the approach, technique, and value are subject to review to determine whether  
24 the appraisal process complies with all applicable legal standards.

25  
26 Summarized below are some key elements of the standard of care (level of diligence)  
27 for development of just valuations for Florida ad valorem tax purposes:

- 28  
29 • Identify the legal, physical, and economic attributes of the subject property  
30  
31 • Identify and comply with all applicable law, and avoid superseded case law  
32  
33 • Determine the required data, research, and analysis, and identify the professionally  
34 accepted appraisal practices and an appropriate appraisal methodology  
35  
36 • Collect, analyze, and maintain legal, physical, and economic data as necessary for  
37 credible valuations that comply with applicable law  
38  
39 • Apply due diligence and due care in the appraisal process, avoid carelessness and  
40 negligence, and avoid significant errors of commission and omission  
41  
42 • Comply with each of the 193.011 factors consistent with all other just valuation  
43 standards (avoid cursory consideration of 193.011 factors, correctly apply the factors  
44 needed for a credible and lawful just valuation, and develop professionally accepted  
45 reasons for not applying any factor not applied)  
46

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- 1 • Avoid appraisal practices that are arbitrarily different from the appraisal practices  
2 applied to other comparable property in the same county  
3
- 4 • Correctly apply an appropriate appraisal methodology that complies with  
5 professionally accepted appraisal practices and each of the other legal standards  
6
- 7 • Reconcile data and analyses used, and correctly employ quality review procedures  
8

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

9  
10  
11  
12 Professionally accepted appraisal practices require communicating, or reporting, the  
13 appraisal process used to develop the just valuation. An appraisal report is any  
14 communication, written or oral, about the appraisal process applied in just valuations.  
15

16 Appraisal reporting is part of the appraisal process and is how the appraiser  
17 demonstrates compliance with each of the just valuation standards provided by law.  
18

19 Conclusory statements made by an appraiser reporting an appraisal process are not  
20 sufficient and are not credible. See Scripps Howard Cable Co. v. Havill, 665 So.2d 1071,  
21 1077 (Fla. 5th DCA 1995), approved, 742 So.2d 210 (Fla. 1998).  
22

23 The text, *Fundamentals of Mass Appraisal*, published in 2011 by the International  
24 Association of Assessing Officers, pages 4-5, lists appraisal reporting as part of the  
25 appraisal process and then states in pertinent part:  
26

27 *“Professional standards, however, require all appraisers to work systematically,*  
28 *document their work, communicate their opinions of value clearly, and behave ethically.”*  
29

30 The text, *The Appraisal of Real Estate, Fifteenth Edition*, published in 2020 by the  
31 Appraisal Institute, pages 31 and 37, lists appraisal reporting as part of the appraisal  
32 process and then states in part as follows:  
33

34 *“The report of the value opinion or conclusion addresses the data analyzed, the*  
35 *methods applied, and the reasoning that led to the value conclusion and does so in a*  
36 *manner that enables the intended users to properly understand the appraiser’s findings*  
37 *and conclusions. The objective of the appraisal report is to communicate the valuation*  
38 *process with sufficient supporting evidence and logic to ensure that the assignment*  
39 *results are credible for the intended use.”*  
40

41 Standard 6, Mass Appraisal Reporting, *Uniform Standards of Professional Appraisal*  
42 *Practice, 2020-2021 Edition*, page 39, requires appraisers to explain the exclusion of  
43 any of the three approaches to value and to:  
44

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1 “provide sufficient information to enable the client and intended users to have  
2 confidence that the process and procedures used conform to accepted methods and  
3 result in credible value conclusions;”  
4

5 A recent trial court judgment states as follows regarding appraisal reporting:  
6

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

14 See Dillard's, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).  
15

16 Summarized below are some key elements of the standard of care (level of diligence)  
17 for just valuation reporting:  
18

- 19 • Must provide meaningful disclosure of procedures applied in the appraisal process  
20
- 21 • Must be relevant to the legal, physical, and economic attributes of the property, each  
22 of the applicable legal criteria, and the appraisal process  
23
- 24 • Must be credible in the context of Florida ad valorem property tax appraisal  
25
- 26 • Must be clear and accurate to enable intended users to understand the appraisal  
27 process  
28
- 29 • Must include explanations and reasons, addressing each of the valuation approaches  
30 and each of the applicable legal criteria, regarding what was actually done and how  
31 and why, in developing the just value  
32
- 33 • Must provide lawful and professionally accepted explanations and reasons for not  
34 applying a legal criterion or not applying an appraisal approach  
35
- 36 • Must be sufficient for intended users to understand how and why the just value was  
37 developed via the methodology used  
38
- 39 • Must avoid misleading statements, conclusory statements, and superseded case law  
40

### 41 **2. Compliance with Each of the Just Valuation Factors in Section 193.011, F.S.** 42

43 After the landmark 2009 legislation, the eight just valuation factors in section 193.011  
44 are now incorporated into section 194.301 in three places.  
45

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- 1 • These eight just valuation factors must now be applied together with the other just  
2 valuation standards in sections 194.301 and 194.3015, F.S., and in other applicable  
3 law, so that each standard is given professionally accepted and lawful meaning.  
4
- 5 • The method of just valuation and the weight to be given to each of the section  
6 193.011 factors is now governed solely by: 1) the legal, physical, and economic  
7 characteristics of the subject property; 2) the four additional determinative standards  
8 in sections 194.301 and 194.3015, F.S.; and 3) all other applicable law.  
9
- 10 • In just valuations under current law, it is necessary to actually apply the section  
11 193.011 factors that are appropriate for compliance with the four new determinative  
12 standards in sections 194.301 and 194.3015 and all other applicable law.  
13
- 14 • Under the dictates of section 194.301 and 194.3015, F.S., for any section 193.011  
15 factor not applied in a particular just valuation, the appraiser must report a clear,  
16 logical, fact-based, and professionally accepted reason for excluding the factor.  
17

18 Pre-2009 just valuation case law is replete with obsolete statements indicating a much  
19 lower level of diligence (standard of care) for developing and reporting just valuations  
20 than required by current law, and these obsolete statements must be avoided.  
21

22 Just valuation evidence, including evidence intended to show the property appraiser's  
23 compliance with each of the section 193.011 factors, "must be real, material, pertinent,  
24 and relevant evidence, as opposed to ethereal, metaphysical, speculative, theoretical,  
25 or hypothetical, and it must have definite probative value." See Singh v. Walt Disney  
26 Parks, --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).  
27

28 The legal, physical, and economic characteristics of the subject property must be  
29 reflected in the appraisal data applied for the eight factors in section 193.011 and must  
30 be applied in all just valuation approaches.  
31

32 The appraiser's compliance with legal standards, including the just valuation  
33 factors in section 193.011, must be demonstrated in the appraisal data, analyses,  
34 practices, and methods used to develop and report just valuations.  
35

36 Appraisal approaches (methods), the application of legal standards including the section  
37 193.011 factors, and the validity of resulting values are interconnected and cannot  
38 logically be separated.  
39

40 In administrative reviews, the overarching legal standards should be applied in  
41 determining whether the appraisal methodology used in making a value  
42 assessment is appropriate under the circumstances and this, in turn, should be  
43 applied in determining whether the value assessment is valid.  
44

45 Below are two examples of how court decisions have correctly applied the section  
46 193.011 factors in reviewing appraisal methodology and resulting just valuations.  
47

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

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

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

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

*"Failure to consider one or more of the factors set forth in section 193.011 is sufficient to invalidate an appraisal done by a tax assessor..."*

*"We also think the lower court correctly rejected appellants' appraisal because the method used was too speculative."*

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

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

Section 194.301(2)(a)3., F.S., provides that to withstand judicial or administrative review, a just valuation cannot be: "...*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.*"

Along similar lines, section 195.0012, F.S., expresses legislative intent for assessment uniformity including "...*uniform assessment as between property within each county...*"

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

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

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

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1 “The reliability of sales ratio statistics depends on unsold parcels being appraised in the  
2 same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio  
3 results, possibly rendering them useless. Equally important, selective reappraisal of  
4 sold parcels (“sales chasing”) is a serious violation of basic appraisal uniformity and is  
5 highly unprofessional.”  
6

7 Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See  
8 Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).  
9

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

11  
12 In 2009, the Florida Legislature made crystal clear its intent to supersede case law that  
13 is inconsistent with legislative enactments in sections 194.301 and 194.3015, F.S.  
14

15 The 2009 enactments re-engineered the development, reporting, and review of just  
16 valuations in Florida. Yet, in some cases, these major statutory changes have not been  
17 applied in practice and this continues to be a serious problem.  
18

19 Pre-2009 case law, as well as some post-2009 legal arguments based on obsolete pre-  
20 2009 case law, do NOT reflect the major statutory changes enacted in 2009.  
21

22 For public trust to exist in the VAB process, VABs, VAB attorneys, and special  
23 magistrates must understand and act in accordance with this landmark legislation and  
24 must be diligent in avoiding the use of obsolete case law in the VAB process.  
25

26 The last sentence in subsection 194.301(1), F.S., now states: “*The provisions of this*  
27 *subsection preempt any prior case law that is inconsistent with this subsection.*”  
28

29 Further, section 194.3015, F.S., now states in its entirety:  
30

31 “(1) *It is the express intent of the Legislature that a taxpayer shall never have the*  
32 *burden of proving that the property appraiser’s assessment is not supported by any*  
33 *reasonable hypothesis of a legal assessment. All cases establishing the every-*  
34 *reasonable-hypothesis standard were expressly rejected by the Legislature on the*  
35 *adoption of chapter 97-85, Laws of Florida. It is the further intent of the Legislature that*  
36 *any cases published since 1997 citing the every-reasonable-hypothesis standard are*  
37 *expressly rejected to the extent that they are interpretive of legislative intent.*”  
38

39 “(2) *This section is intended to clarify existing law and apply retroactively.*”  
40

41 In 1997, the Florida Legislature, in an attempt to implement fairness for property  
42 taxpayers, enacted the original version of section 194.301, F.S., stating in pertinent part:  
43

44 “*In no case shall the taxpayer have the burden of proving that the property appraiser’s*  
45 *assessment is not supported by any reasonable hypothesis of a legal assessment.*”  
46

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

3  
4 In 2001, despite the 1997 enactment of section 194.301, F.S., in Wal-Mart v. Todora,  
5 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the court issued a decision that actually applied  
6 the “*reasonable hypothesis*” standard, stating:

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

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

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

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

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

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

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

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

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

45

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

4  
5 “...in its final judgment, the trial court cited to language from *Mazourek v. Wal-Mart*  
6 *Stores, Inc.*, 831 So. 2d 85, 89 (Fla. 2002), that “[t]he property appraiser’s determination  
7 of assessment value is an exercise of administrative discretion within the officer’s field  
8 of expertise.” The *Mazourek* decision preceded the 2009 amendment to section  
9 194.301, Florida Statutes, where the Legislature articulated that the value of property  
10 must be determined by an appraisal methodology that met the criteria of section  
11 193.011 and professionally accepted appraisal practices.”

### Other Examples of Superseded Case Law

12  
13  
14  
15 The holdings in some court decisions based on the legislatively rejected “*reasonable*  
16 *hypothesis*” standard show an interconnection between such standard and the obsolete  
17 concomitant (attendant) standards that also appeared in such holdings.

18  
19 For example, in CVS EGL (2013), the court rejected the concomitant standard of “*within*  
20 *the range of reasonable appraisals*” because of its interconnection with the legislatively  
21 rejected “*reasonable hypothesis*” standard.

22  
23 Eight examples of superseded case law are listed and described below.

24  
25 None of these superseded standards is harmless because they unequivocally reflect a  
26 lower standard of care and diligence for developing, reporting, and reviewing just values  
27 than the standards required by current law in sections 194.301 and 194.3015.

28  
29 VABs, VAB attorneys, and special magistrates must be diligent to avoid using any of  
30 these types of superseded standards and to reject any arguments espousing them.

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

31  
32  
33 “*the core issue in any action challenging a tax assessment is the*  
34 *amount of the assessment, not the methodology utilized in arriving at the valuation*”

35  
36 In Bystrom v. Whitman, 488 So. 2d 520, 521 (Fla. 1986), the court applied this obsolete  
37 standard together with the rejected “*reasonable hypothesis*” standard.

38  
39 In 2007 in CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007), the U.S.  
40 Supreme Court emphasized the necessity of reviewing appraisal methodology in  
41 valuations disputes, stating: “*We do not see how a court can go about determining true*  
42 *market value if it may not look behind the State’s choice of valuation methods.*”

43  
44 In 2009, the Legislature enacted four new determinative just valuation standards, each  
45 providing methodological requirements for developing and reviewing just valuations.

### **Superseded Concomitant Standard No. 2:**



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1 The valuation method and the weight actually given to each section 193.011 factor can  
2 be proven only by the actual application and reporting of an appropriate appraisal  
3 process that complies with all applicable law and results in a valid just valuation.  
4

5 Thus, under current law, the valuation method and the weight given to each section  
6 193.011 factor are governed solely by the legal, physical, and economic characteristics  
7 of the subject property and by the appropriate application of all just valuation standards  
8 in sections 194.301 and 194.3015 and all other applicable law.  
9

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

10 *“The determination of just value inherently and necessarily requires*  
11 *the exercise of appraisal judgment and broad discretion by Florida property appraisers.”*  
12  
13

14 In Fla. Department of Revenue v. Howard, 916 So. 2d 640 (Fla. 2005), the decision  
15 references the two preceding obsolete statements based on “*discretion*,” along with this  
16 third variant of the obsolete “discretion” standard.  
17

18 This “*discretion*” variant was based on decades-old legal concepts from a time when the  
19 now legislatively rejected “*reasonable hypotheses*” standard held sway.  
20

21 Notably, the term “*discretion*” does not appear in the 2020-2021 edition of the Uniform  
22 Standards of Professional Appraisal Practice and, likewise, does not appear in the  
23 widely cited appraisal text, *The Appraisal of Real Estate, 15th Edition*, published in 2020  
24 by the Appraisal Institute.  
25

26 Regarding “*appraisal judgment*,” key excerpts from the *Uniform Appraisal Standards for*  
27 *Federal Land Acquisition 2016*, published by the Appraisal Foundation, pages 203-204,  
28 describe the diligent application of sound appraisal judgment in the appraisal process:  
29

30 *“Serving this important function requires expertise, diligence, sound judgment, and*  
31 *objectivity...”*  
32

33 *“The appraiser must be diligent in data collection and competently apply the accepted*  
34 *methods and techniques of the appraisal profession...”*  
35

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

43 Thus, appraisal judgment is NOT a substitute for appraisal expertise, diligence, or  
44 objectivity. For valid just valuations, appraisal judgment must be sound and must be  
45 applied in compliance with the seven overarching standards for valid just valuations.  
46

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

47



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1  
2 This old standard was rendered obsolete by the U.S. Supreme Court's 2007 decision in  
3 CSX and by Florida's enactments in sections 194.301 and 194.3015, F.S.

### 4 5 **5. Compliance with All Other Applicable Law.**

6  
7 Other applicable law includes just valuation standards for particular situations. These  
8 standards may exist in Florida Statutes or in currently applicable case law.

9  
10 Examples of other just valuation standards from statutes include the following:

- 11  
12 • Section 192.042(2), F.S., provides the January 1 date of assessment and provides  
13 that construction work in progress shall have no value placed thereon until  
14 substantially completed as defined in section 192.001(11)(d), F.S.

- 15  
16 • Section 193.016, F.S., provides as follows regarding valuations of tangible personal  
17 property:

18  
19 *"If the property appraiser's assessment of the same items of tangible personal*  
20 *property in the previous year was adjusted by the value adjustment board and the*  
21 *decision of the board to reduce the assessment was not successfully appealed by*  
22 *the property appraiser, the property appraiser shall consider the reduced values*  
23 *determined by the value adjustment board in assessing those items of tangible*  
24 *personal property."*

25  
26 *"If the property appraiser adjusts upward the reduced values previously determined*  
27 *by the value adjustment board, the property appraiser shall assert additional basic*  
28 *and underlying facts not properly considered by the value adjustment board as the*  
29 *basis for the increased valuation notwithstanding the prior adjustment by the board."*

30  
31 Other applicable law may also include current case law standards such as:

- 32  
33 • Case law specifies fee simple estate as the interest to be appraised in just valuations.  
34 See Schultz v. TM Fla.-Ohio Realty, Ltd., 577 So.2d 573 (Fla. 1991), and see Dept. of  
35 Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 (Fla. 1977).  
36  
37 • Case law precludes just valuation methods that include intangible value. See Scripps  
38 Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), and see Singh v. Walt Disney Parks,  
39 --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).

### 40 41 **6. Correct Application of an Appropriate Appraisal Methodology**

42  
43 After its 2009 amendment, section 194.301(1), F.S., provides in pertinent part:

44  
45 *"However, a taxpayer who challenges an assessment is entitled to a determination by*  
46 *the value adjustment board or court of the appropriateness of the appraisal*  
47 *methodology used in making the assessment. The value of property must be*

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1 *determined by an appraisal methodology that complies with the criteria of s. 193.011*  
2 *and professionally accepted appraisal practices. The provisions of this subsection*  
3 *preempt any prior case law that is inconsistent with this subsection.”*

4  
5 An appropriate appraisal methodology is one that: 1) identifies and is appropriately  
6 based on the legal, physical, and economic characteristics of the subject property, 2)  
7 complies with overarching standards one through five, and 3) is correctly applied.

8  
9 In Scripps Howard Cable Co. v. Havill, 665 So. 2d 1071 (Fla. 5th DCA 1995), *approved*,  
10 742 So. 2d 210 (Fla. 1998), the court held that the appraisal method under review was  
11 not appropriate under the circumstances and certified the following question:

12  
13 *“Is the Income/Unit Rule Method of Appraisal an Appropriate Method of Assessing the*  
14 *Tangible Personal Property of Television Cable Companies?”*

15  
16 Then, in Scripps Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), the Florida  
17 Supreme Court answered the certified question in the negative and approved the  
18 decision of the Fifth District, holding that the method was not appropriate because it  
19 unlawfully included the value of intangible property.

20  
21 In 2007, the U.S. Supreme Court held that disputes over ad valorem tax values require  
22 review of the appraisal methodology. See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552  
23 U.S. 9 (2007), 552 U.S. 9 (2007) (“We do not see how a court can go about determining true  
24 market value if it may not look behind the State’s choice of valuation methods”).

25  
26 In August 2020, the court issued its final decision in Singh v. Walt Disney Parks, ---  
27 So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020), stating in pertinent part:

28  
29 *“At trial, the parties agreed that the income approach to value was a*  
30 *professionally accepted appraisal practice and provided the most reliable*  
31 *indicator of value, but they disputed the proper methodology for performing such*  
32 *an assessment.”*

33  
34 *“Moreover, it ruled that even if the Rushmore method was a professionally accepted*  
35 *appraisal practice, it could not be used in a manner that violated Florida law. The trial*  
36 *court concluded that by including value attributable to Disney business activities on the*  
37 *Property, Appraiser applied the Rushmore method in a way that violated Florida law.”*

38  
39 *“We agree with the trial court that Appraiser, in the manner in which he applied the*  
40 *Rushmore method, impermissibly included the value of Disney’s intangible business*  
41 *assets in its assessment.”*

42  
43 The Disney decision shows even if an appraisal practice is professionally accepted in  
44 other contexts, it cannot be applied in a manner that violates another part of Florida law.

45  
46 Later, in October 2020, a trial court issued a final judgment stating as follows regarding  
47 appropriate appraisal methodology.

1  
2 “The Property Appraiser failed to prove by a preponderance of the evidence that his  
3 assessment was arrived at by utilizing methodology complying with section 193.011 and  
4 professionally accepted appraisal practices. Additionally, the Court finds the Property  
5 Appraiser's sole reliance on a cost approach without considering and preparing at least  
6 one of an income and/or sales comparison approach for the Subject Property type was  
7 not an appropriate appraisal methodology used in making the assessment.”

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

9  
10 **7. A Just Valuation Developed and Reported in Compliance with Overarching**  
11 **Standards One through Six and Supported by a Preponderance of the Relevant**  
12 **and Credible Evidence**

13  
14 For a just valuation to withstand the scrutiny of review, it must be developed and  
15 reported in compliance with overarching standards one through six and must be  
16 supported by a preponderance of the relevant and credible just valuation evidence.

17  
18  
19 **Petitioner Not Required to Present Opinion or Estimate of Value**

20 The petitioner is not required to provide an opinion or estimate of just value.

21  
22 No provision of law requires the petitioner to present an opinion or estimate of value.

23  
24 The Board or special magistrate is not authorized to require a petitioner to provide an  
25 opinion or estimate of just value.

26  
27 The petitioner has the option of choosing whether to present an opinion or estimate of  
28 just value.

29  
30  
31 **Presentation of Evidence by the Parties**

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

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

40  
41 Under Subsection 194.301(1), F.S., in a hearing on just value, the first issue to be  
42 considered is whether the property appraiser establishes a presumption of correctness.

43  
44 \* The property appraiser shall present evidence on this issue first. See Rule 12D-  
45 9.024(7), F.A.C.

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1 \* While the property appraiser is required to present evidence on this issue first, the  
2 Board or special magistrate must allow the petitioner a chance to present evidence  
3 on this issue before deciding whether the presumption of correctness is established.

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

8  
9 If the property appraiser establishes a presumption of correctness by proving by a  
10 preponderance of the evidence that the just value assessment was arrived at by  
11 complying with Section 193.011, F.S., and professionally accepted appraisal practices,  
12 including mass appraisal standards, if appropriate, the petitioner must prove by a  
13 preponderance of the evidence that:

- 14 1. The property appraiser’s just valuation does not represent just value; or
- 15 16 2. The property appraiser’s just valuation is arbitrarily based on appraisal practices that  
17 are different from the appraisal practices generally applied by the property appraiser  
18 to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as  
19 amended by Chapter 2009-121, Laws of Florida (House Bill 521).

20  
21  
22 However, if the property appraiser does not establish a presumption of correctness  
23 because he or she did not prove by a preponderance of the evidence that the just  
24 valuation was arrived at by complying with Section 193.011, F.S., and professionally  
25 accepted appraisal practices, including mass appraisal standards, if appropriate, the  
26 Board or special magistrate must take one of the two following actions:

- 27  
28 1. If the record contains competent substantial evidence of just value that cumulatively  
29 meets the requirements of Section 193.011, F.S., and professionally accepted  
30 appraisal practices, the Board or special magistrate must establish a revised just  
31 value; or
- 32  
33 2. If the record lacks such competent substantial evidence, the Board or special  
34 magistrate must remand the assessment to the property appraiser with appropriate  
35 directions with which the property appraiser must comply.

### **Evaluation of Evidence by the Board or Special Magistrate**

36  
37  
38 Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special  
39 magistrate must:

- 40  
41 1. Review the evidence presented by the parties;
- 42  
43 2. Determine whether the evidence presented is admissible;
- 44  
45 3. Admit the evidence that is admissible;

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- 1 4. Identify the evidence presented to indicate that it is admitted or not admitted; and
- 2
- 3 5. Consider the admitted evidence.
- 4

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

7  
8 *“No evidence shall be considered by the board or special magistrate except when*  
9 *presented and admitted during the time scheduled for the petitioner’s hearing, or at a*  
10 *time when the petitioner has been given reasonable notice.”* See Rule 12D-9.025(4)(a),  
11 F.A.C.

12  
13 *“If a party submits evidence to the board clerk prior to the hearing, the board or special*  
14 *magistrate shall not review or consider such evidence prior to the hearing.”* See Rule  
15 12D-9.025(4)(b), F.A.C.

16  
17 Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:

- 18
- 19 1. *“As the trier of fact, the board or special magistrate may independently rule on the*  
20 *admissibility and use of evidence.”*
- 21
- 22 2. *“If the board or special magistrate has any questions relating to the admissibility and*  
23 *use of evidence, the board or special magistrate should consult with the board legal*  
24 *counsel.”*
- 25
- 26 3. *“The basis for any ruling on admissibility of evidence must be reflected in the*  
27 *record.”*
- 28
- 29 4. *“The special magistrate may delay ruling on the question during the hearing and*  
30 *consult with board legal counsel after the hearing.”*
- 31

32 The Board or special magistrate shall consider the admitted evidence. See Rule 12D-  
33 9.025(1)(d), F.A.C.

34  
35 A property owner generally is qualified, on account of ownership, to testify regarding the  
36 just value of his or her property. See In re Steffen, 342 B.R. 861 (Bkrcty. M.D. Fla. 2006).

37  
38 NOTE: More information on the admissibility of evidence is presented in Module 4 of  
39 this training.

### 40 41 42 **Sufficiency of Evidence**

43 When applied to evidence, the term “sufficient” is a test of adequacy. See Rule 12D-  
44 9.027(6), F.A.C.

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1 Sufficient evidence is admitted evidence that has enough overall weight, in terms of  
2 relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6),  
3 F.A.C.

4  
5 The Florida Supreme Court stated the following regarding sufficient evidence:  
6 *“Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character,*  
7 *weight, or amount, as will legally justify the judicial or official action demanded.”* See  
8 *Tibbs v. State*, 397 So.2d 1120 (Fla. 1981). Also, see *Moore v. State*, 800 So.2d 747 (Fla. 5th  
9 DCA 2001).

10  
11 A particular conclusion is justified when the overall weight of the admitted evidence  
12 meets the standard of proof that applies to the issue under consideration. See Rule 12D-  
13 9.027(6), F.A.C.

14  
15 The Board or special magistrate must consider the admitted evidence and determine  
16 whether it is sufficiently relevant and credible to reach the “preponderance of the  
17 evidence” standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-  
18 9.027(5), and 12D-9.027(6), F.A.C.

19  
20 Rule 12D-9.027(6), F.A.C., states the following in pertinent part: *“In determining*  
21 *whether the admitted evidence is sufficient for a particular issue under consideration,*  
22 *the board or special magistrate shall:*

- 23  
24 (a) *Consider the relevance and credibility of the admitted evidence as a whole,*  
25 *regardless of which party presented the evidence;*  
26  
27 (b) *Determine the relevance and credibility, or overall weight, of the evidence;*  
28  
29 (c) *Compare the overall weight of the evidence to the standard of proof;*  
30  
31 (d) *Determine whether the overall weight of the evidence is sufficient to reach the*  
32 *standard of proof; and*  
33  
34 (e) *Produce a conclusion of law based on the determination of whether the overall*  
35 *weight of the evidence has reached the standard of proof.”*  
36

37 For administrative reviews of just valuations, “relevant evidence” is evidence that is  
38 reasonably related, directly or indirectly, to the statutory criteria that apply to the just  
39 valuation of the petitioned property. See Rule 12D-9.025(2)(b), F.A.C.

40  
41 \* This description means the evidence meets or exceeds a minimum level of  
42 relevance necessary to be admitted for consideration, but does not necessarily  
43 mean that the evidence has sufficient relevance to legally justify a particular  
44 conclusion. See Rule 12D-9.025(2)(b), F.A.C.

45  
46 In evaluating the relevance of evidence, the Board or special magistrate must consider,  
47 as of the January 1 assessment date, how well the evidence relates to the petitioned

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1 property and to the statutory criteria found in Section 193.011, F.S., and in Section  
2 194.301, F.S.

3  
4 For administrative reviews of just valuations, “credible evidence” means evidence that is  
5 worthy of belief (believable). See *Black’s Law Dictionary, Eighth Edition*, page 596.

6  
7 NOTE: More information on evaluating the relevance and credibility of evidence is  
8 presented in Module 11 of this training.

9  
10 By itself, the property record card is not sufficient evidence for establishing a  
11 presumption of correctness for the assessment under Subsection 194.301(1), F.S.

12  
13 Materials describing the general appraisal practices of the property appraiser alone,  
14 without discussing how those practices were applied to the assessment at issue, are not  
15 sufficient to establish a presumption of correctness for the assessment. See Property Tax  
16 Informational Bulletin PTO 09-29.

17  
18 The approval of an assessment roll by the Department of Revenue is not evidence that  
19 a particular assessment was made in compliance with statutory requirements and is not  
20 sufficient to establish a presumption of correctness for the assessment. See Property Tax  
21 Informational Bulletin PTO 09-29.

### 22 23 24 **Requirements for Establishing a Presumption of Correctness**

25 A presumption of correctness for the assessment is not established unless the property  
26 appraiser proves by a preponderance of the evidence that the property appraiser’s just  
27 valuation methodology complies with Section 193.011, F.S., and professionally  
28 accepted appraisal practices, including mass appraisal standards, if appropriate. See  
29 Rule 12D-9.027(2)(a), F.A.C.

30  
31 A presumption of correctness for the assessment is established only when the property  
32 appraiser proves by a preponderance of the evidence that the property appraiser’s just  
33 valuation methodology complies with Section 193.011, F.S., and professionally  
34 accepted appraisal practices, including mass appraisal standards, if appropriate.

### 35 36 37 **Requirements for Overcoming a Presumption of Correctness**

38 If the property appraiser establishes a presumption of correctness, the petitioner can  
39 overcome the presumption of correctness by proving by a preponderance of the  
40 evidence one of the following:

- 41  
42 1. The property appraiser’s just valuation does not represent just value; or  
43  
44 2. The property appraiser’s just valuation is arbitrarily based on appraisal practices that  
45 are different from the appraisal practices generally applied by the property appraiser  
46 to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as  
47 amended by Chapter 2009-121, Laws of Florida (House Bill 521).

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45

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.

### **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:

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- 1 1. The property appraiser does not establish a presumption of correctness for the  
2 assessment and the hearing record contains competent substantial evidence for  
3 establishing a revised just value as described above; or  
4
- 5 2. The petitioner overcomes a presumption of correctness established by the property  
6 appraiser and the hearing record contains competent substantial evidence for  
7 establishing a revised just value as described above.  
8

9 Within their scope of authority, the Board or special magistrate shall establish a revised  
10 just value based upon the competent substantial evidence for establishing a revised just  
11 value. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House  
12 Bill 521).

13  
14 Prior to 2009 and the adoption of House Bill 521, Section 194.301, F.S., provided that  
15 the Board may establish the assessment when authorized.  
16

17 However, the current statute, effective for administrative reviews in 2009, specifically  
18 requires that the Board shall establish the just value when authorized by law. See Section  
19 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).  
20

21 *“In establishing a revised just value, the board or special magistrate is not restricted to*  
22 *any specific value offered by one of the parties.”* See Rule 12D-9.027(2)(b)3.a., F.A.C.  
23

24 In establishing a revised just value when required by law, Boards and special  
25 magistrates are not required, and are not authorized, to complete an independent  
26 valuation approach.  
27

28 The establishment of a revised just value does not require the evidence necessary to  
29 complete an independent valuation approach.  
30

31 The establishment of a revised just value only requires enough evidence to legally  
32 justify making an adjustment to the property appraiser’s original just valuation.  
33

34 In establishing a revised just value when required by law, Boards and special  
35 magistrates are authorized to make the necessary calculations.  
36  
37

### **Sequence of General Procedural Steps**

38 This section sets forth below a sequence of general procedural steps for Boards and  
39 special magistrates to follow in administrative reviews of just valuations in order to fulfill  
40 the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.  
41  
42

43 This sequence of steps applies to: the consideration of evidence, the development of  
44 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.  
45

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1 “The board or special magistrate shall not be required to make, at any time during a  
2 hearing, any oral or written finding, conclusion, decision, or reason for decision.” See  
3 Rule 12D-9.025(9), F.A.C.

4  
5 “The board or special magistrate has the discretion to determine whether to make such  
6 determinations during a hearing or to consider the petition and evidence further after the  
7 hearing and then make such determinations.” See Rule 12D-9.025(9), F.A.C.

8  
9 In following this sequence of steps, Boards or special magistrates must also meet the  
10 requirements of Rule 12D-9.025(1), F.A.C., which are the following:

- 11  
12 \* Review the evidence presented by the parties;  
13  
14 \* Determine whether the evidence presented is admissible;  
15  
16 \* Admit the evidence that is admissible; and  
17  
18 \* Identify the evidence presented to indicate that it is admitted or not admitted.

19  
20 The sequence of general procedural steps presented below is based on Rule 12D-  
21 9.027(2), F.A.C. The sequence of general procedural steps is as follows.

- 22  
23 1. Consider the admitted evidence presented by the parties.  
24  
25 2. Identify and consider the essential characteristics of the petitioned property based on  
26 the admitted evidence and the factors in Section 193.011, F.S.  
27  
28 3. Identify the appraisal methodology used by the property appraiser in developing his  
29 or her just valuation of the petitioned property, and consider this appraisal  
30 methodology in light of the essential characteristics of the petitioned property.  
31  
32 4. Determine whether the admitted evidence proves by a preponderance of the  
33 evidence that the property appraiser’s methodology complies with Section 193.011,  
34 F.S., and professionally accepted appraisal practices, including mass appraisal  
35 standards, if appropriate.  
36  
37 5. Determine whether the property appraiser’s appraisal methodology is appropriate  
38 and whether the property appraiser established a presumption of correctness for the  
39 assessment.  
40  
41 a) The property appraiser’s just valuation methodology is not appropriate and a  
42 presumption of correctness is not established unless the admitted evidence  
43 proves by a preponderance of the evidence that the property appraiser’s just  
44 valuation methodology complies with Section 193.011, F.S., and professionally  
45 accepted appraisal practices, including mass appraisal standards, if appropriate.  
46

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- 1 b) The property appraiser's just valuation methodology is appropriate and the  
2 presumption of correctness is established only when the admitted evidence  
3 proves by a preponderance of the evidence that the property appraiser's just  
4 valuation methodology complies with Section 193.011, F.S., and professionally  
5 accepted appraisal practices, including mass appraisal standards, if appropriate.  
6
- 7 6. If the Board or special magistrate determines that a presumption of correctness is  
8 established, the Board or special magistrate must then determine whether the  
9 admitted evidence proves by a preponderance of the evidence that:  
10
- 11 a) The property appraiser's just valuation does not represent just value; or  
12
- 13 b) The property appraiser's just valuation is arbitrarily based on appraisal practices  
14 that are different from the appraisal practices generally applied by the property  
15 appraiser to comparable property within the same county.  
16
- 17 7. If the Board or special magistrate determines that one or both of the conditions  
18 specified under Step 6 exist, the presumption of correctness is overcome.  
19
- 20 8. If the property appraiser does not establish a presumption of correctness, or if the  
21 presumption of correctness is overcome, the Board or special magistrate must  
22 determine whether the hearing record contains competent, substantial evidence of  
23 just value which cumulatively meets the criteria of Section 193.011, F.S., and  
24 professionally accepted appraisal practices.  
25
- 26 a) If the hearing record contains competent, substantial evidence for establishing a  
27 revised just value, the Board or an appraiser special magistrate must establish a  
28 revised just value based only upon such evidence. In establishing a revised just  
29 value, the Board or special magistrate is not restricted to any specific value  
30 offered by one of the parties.  
31
- 32 b) If the hearing record lacks competent, substantial evidence for establishing a  
33 revised just value, the Board or special magistrate must remand the assessment  
34 to the property appraiser with appropriate directions for establishing just value.  
35 The property appraiser is required to follow these directions.  
36
- 37 9. If the property appraiser establishes a presumption of correctness as described in  
38 Step 5 above and that presumption of correctness is not overcome as described in  
39 Step 6 above, the assessment stands.  
40  
41

### **Operation of the Eighth Criterion Under Florida Law**

43 Subsection 193.011(8), F.S., known as the "eighth criterion," requires proper  
44 consideration of the "net proceeds of sale." The "eighth criterion" was last amended in  
45 1979 and is presented below in its entirety.  
46

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1 “The net proceeds of the sale of the property, as received by the seller, after deduction  
2 of all of the usual and reasonable fees and costs of the sale, including the costs and  
3 expenses of financing, and allowance for unconventional or atypical terms of financing  
4 arrangements. When the net proceeds of the sale of any property are utilized, directly or  
5 indirectly, in the determination of just valuation of realty of the sold parcel or any other  
6 parcel under the provisions of this section, the property appraiser, for the purposes of  
7 such determination, shall exclude any portion of such net proceeds attributable to  
8 payments for household furnishings or other items of personal property.”

9  
10 Subsection 193.011(8), F.S., requires proper consideration of the “net proceeds of sale”  
11 of tangible personal property, regardless of whether an actual sale of the property has  
12 occurred. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000)  
13 review denied 780 So.2d 916 (Fla. 2001).

14  
15 In Oyster Pointe Condo. Assoc., Inc. v. Nolte, 524 So.2d 415, 418 (Fla. 1988), the  
16 Florida Supreme Court, in holding that timeshare marketing costs were not (under  
17 timeshare statutes at that time) part of the “reasonable fees and costs of sale” under  
18 section 193.011(8), tellingly stated as follows:

19  
20 “However, as we read section 193.011(8), these costs are not among the “reasonable  
21 fees and costs of sale” contemplated by the legislature to be excluded from the ad  
22 valorem appraisal process.” (underlined emphasis added)

- 23
- 24 • This holding is notable because it explains legislative intent for the costs of sale to be  
25 “excluded from the ad valorem appraisal process” without exception.
  - 26  
27 • This holding aligns with uniform application of the cost of sale factor, without regard  
28 to whether the property was sold, the property type involved, or the approach used to  
29 value the property.

30  
31 Further, a failure to uniformly apply the “net proceeds of sale” factor would be selective  
32 reappraisal.

33  
34 The text, *Mass Appraisal of Real Property*, published in 1999 by the International  
35 Association of Assessing Officers, page 315, describes the highly undesirable practice  
36 of selective reappraisal as follows:

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

43  
44 Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See  
45 Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).

46

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1 The eighth criterion must be properly considered in the just valuation of tangible  
2 personal property. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA  
3 2000) review denied 780 So.2d 916 (Fla. 2001).

4  
5 \* In administrative reviews of tangible personal property just valuations, Boards and  
6 special magistrates must also properly consider the eighth criterion.

7  
8 However, Florida law does not provide for the same information regarding the eighth  
9 criterion on tangible personal property assessment rolls as for real property rolls.

10  
11 \* There are no recorded selling prices for tangible personal property as there are for  
12 real property.

13  
14 \* Property appraisers are not required to report selling prices for tangible personal  
15 property to the Department as they are required to do for real property.

16  
17 NOTE: More information on the eighth criterion and the just valuation of tangible  
18 personal property is presented earlier in this module in the section titled "Florida  
19 Information on Appraisal Development."  
20  
21

### **The Eighth Criterion in Reviews of Tangible Personal Property**

22 In the development of tangible personal property assessment rolls, property appraisers  
23 are responsible for properly considering the eighth criterion in the just valuation of  
24 tangible personal property.  
25  
26

27 In administrative reviews of just valuations of tangible personal property, the parties are  
28 responsible for presenting relevant and credible evidence, in accordance with law,  
29 regarding how the eighth criterion applies to the just valuation of tangible personal  
30 property.  
31

32 Boards and special magistrates are responsible for determining, based on admitted  
33 evidence and in accordance with law, how the eighth criterion applies in administrative  
34 reviews of just valuations of tangible personal property.  
35  
36

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## Module 9: Administrative Reviews of Denials of Exemptions and Property Classifications

This training module addresses the following topics:

### **PART 1: Introduction**

- Overview of Exemptions and Property Classifications
- Applications for Exemptions and Property Classifications
- Denials of Exemptions and Property Classifications
- Scope of Authority for Administrative Reviews
- Overview of Statutory Criteria
- Standard of Proof for Administrative Reviews
- Evaluation of Evidence by the Board or Special Magistrate
- Sufficiency of Evidence

### **PART 2: Administrative Reviews of Denials of Exemptions**

- The Administrative Review Process for Denials of Exemptions
- Statutory Criteria for Exemptions

#### **Statutory Criteria for Different Types of Personal Exemptions**

- Homestead Exemption: Qualifications and Benefits
- Homestead Exemption: Permanent Residence
- Homestead Exemption: Rental
- Homestead Exemption: Additional Exemption for Low Income Seniors
- Homestead Exemption: Save Our Homes
- Homestead Exemption: Damaged or Destroyed Property
- Homestead Exemption: Living Quarters for Parents or Grandparents
- Homestead Exemption: Totally and Permanently Disabled Persons
- Exemptions for Veterans
- Exemption for Veterans: Discount for Disabled Veterans
- Exemption for Deployed Service Members Beginning in 2011
- Exemptions for First Responders Who Were Totally and Permanently Disabled in the Line of Duty, and For Surviving Spouses

#### **Statutory Criteria for Different Types of Institutional Exemptions**

- Government Property
- Exempt Entities
- Lands Used for Conservation Purposes
- Specific Educational Exemptions
- Exemptions for Tangible Personal Property
- Other Exemptions

1 **PART 3: Administrative Reviews of Denials of Property Classifications**

- 2 • The Administrative Review Process for Denials of Classifications  
3 • Statutory Criteria for Property Classifications

4 **Statutory Criteria for Different Types of Property Classifications**

- 5 • Agricultural Property  
6 • Agricultural Property: Dispersed Water Storage Programs  
7 • Agricultural Property: Quarantine and Eradication Programs  
8 • Agricultural Property: Special Types  
9 • Agritourism  
10 • Pollution Control Devices  
11 • Noncommercial Recreation and Conservation Lands  
12 • Historic Property  
13 • Historic Property: Section 193.503, F.S.  
14 • Historic Property: Section 193.505, F.S.  
15 • High-water Recharge Property  
16 • Working Waterfront Property  
17 • Renewable Energy Source Device

18  
19 **PART 4: Administrative Reviews of Determinations of Changes of**  
20 **Ownership or Control or Qualifying Improvement**

- 21 • Assessment Increase Limitation for Homestead Real Property  
22 • Assessment Increase Limitation for Non-Homestead Real Property  
23  
24

25 **Learning Objectives**

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

- 27  
28 • Identify what is subtracted from assessed value to arrive at taxable value.  
29 • Recognize the statutory order in which exemptions must be deducted to arrive at  
30 taxable value (see Section 196.031, F.S.)  
31 • Recognize that the disabled veterans discount is deducted after exemptions are  
32 deducted to arrive at taxable value  
33 • Distinguish between a property classification and classified use value  
34 • Identify the requirements for applications for exemptions and property classifications  
35 • Recognize the requirements for denials of exemptions and property classifications  
36 • Identify the statutory criteria for a valid denial of an exemption by the property  
37 appraiser  
38 • Apply the correct procedures for determining whether a denial of an exemption by  
39 the property appraiser is valid  
40 • Apply the correct procedures when a denial of an exemption by the property  
41 appraiser has been determined to be invalid  
42 • Apply the correct procedures when a denial of an exemption by the property  
43 appraiser has been determined to be valid  
44 • Recognize and apply the scope of authority for administrative reviews of denials of  
45 exemptions and property classifications

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- 1 • Identify the items that a Board or special magistrate may consider in addition to
- 2 admitted evidence
- 3 • Recognize that there is no presumption of correctness for a property appraiser's
- 4 determination on an exemption or classification
- 5 • Identify the applicable standard of proof, its definition, and how it is applied
- 6 • Identify and apply the steps for evaluating evidence in administrative reviews
- 7 • Recognize and apply the provisions for ruling on the admissibility of evidence
- 8 • Identify and apply the definitions of relevant evidence and credible evidence
- 9 • Recognize and apply the standards for determining the sufficiency of evidence
- 10 • Identify when the Board or special magistrate is required or is NOT required to make
- 11 determinations such as findings, conclusions, or decisions
- 12 • Apply the sequence of general procedural steps for administrative reviews of denials
- 13 of exemptions
- 14 • Apply the sequence of general procedural steps for administrative reviews of denials
- 15 of property classifications
- 16 • Distinguish between the sequence of general procedural steps for administrative
- 17 reviews of denials of exemptions and the sequence of general procedural steps for
- 18 administrative reviews of denials of property classifications
- 19 • Recognize the conditions under which a Board or special magistrate must grant an
- 20 exemption or classification
- 21 • Recognize the conditions under which a Board or special magistrate must NOT grant
- 22 an exemption or classification
- 23 • Identify and apply the statutory criteria for administrative reviews of denials of
- 24 exemptions and property classifications
- 25
- 26

### PART 1: Introduction

#### **Overview of Exemptions and Property Classifications**

30 Sections 3, 4, and 6, Article VII, of the Florida Constitution, provide for exemptions and  
31 property classifications.

33 Generally, after the property appraiser has considered the just value of a property and  
34 produced an assessed value, the assessed value is then reduced by any exemptions to  
35 produce the taxable value.

37 After the assessed value is correctly determined, the exempt amounts are deducted in  
38 the order provided by law (see Section 196.031, F.S.). After that, any discounts, such as  
39 the disabled veteran's discount, are applied.

41 "Exemption" means exemptions under Chapter 196, Florida Statutes, and other Florida  
42 Statutes.

44 \* For purposes of this training, exemptions include the following: veteran's discount,  
45 immunity where a claim of tax immunity for government property is being made, and  
46 portability assessment differences.

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1  
2 “Property Classification” or “Classification” means a classification of property for  
3 assessment purposes according to applicable statutory criteria, including those in  
4 Chapter 193, Part II, F.S., and an assessment of the property at its classified use value.

5  
6 “Classified use value” means the value of a property that is based solely on the  
7 property’s character or use and based on the applicable statutory criteria, without regard  
8 to the property’s highest and best use. See Subsection 192.001(2), F.S.

### 9 10 11 **Applications for Exemptions and Property Classifications**

12 A property owner must apply for an exemption by the applicable deadline in order to  
13 receive the exemption. See Subsection 196.011(1)(a), F.S.

14  
15 If a property owner failed to timely file for an exemption, he or she must late file for the  
16 exemption with the property appraiser by the 25th day after the mailing of the notice of  
17 proposed property taxes (TRIM notice).

18  
19 If the property appraiser determines, based on sufficient evidence, that the late filed  
20 exemption was late because the applicant was unable to file timely or there were other  
21 extenuating circumstances, the property appraiser may grant the exemption to an  
22 otherwise qualified applicant for the current year.

23  
24 If the property appraiser does not grant the late filed exemption, the property owner may  
25 appeal to the Board, by the 25th day after the mailing of the notice of proposed property  
26 taxes (TRIM notice).

27  
28 The Board may grant the exemption to an otherwise qualified applicant if it finds the  
29 failure to apply was due to extenuating circumstances. Subsection 196.011(8), F.S.

30  
31 If a postal error resulted in an otherwise eligible applicant not filing on time his or her  
32 application for an exemption, the Board or special magistrate must grant the exemption.  
33 Subsection 196.011(7), F.S.

34  
35 The county may waive the requirement that exemptions be applied for annually and  
36 provide for automatic renewal of some exemptions. Subsection 196.011(9), F.S.

37  
38 \* At the option of the property appraiser, initial or original applications for homestead  
39 exemption for the succeeding year may be accepted and granted after March 1.

40  
41 **Note:** Legislation enacted in 2014 amended section 193.461, F.S., to provide that an  
42 applicant for the agricultural classification who does not file an application by the March  
43 1 filing deadline, can file an application with the property appraiser on or before 25 days  
44 after the property appraiser mails the notice of proposed property taxes (TRIM notice).

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- 1 \* The application must include sufficient evidence that demonstrates the applicant was  
2 unable to apply in a timely manner or otherwise demonstrates extenuating  
3 circumstances warranting the classification.  
4
- 5 \* The property appraiser may grant the application if he or she determines the  
6 circumstances warrant.  
7
- 8 \* If the applicant files an application for the classification and fails to provide sufficient  
9 evidence to the property appraiser as required, the applicant may file a petition with  
10 the value adjustment board on or before 25 days after the property appraiser mails  
11 the notice of proposed property taxes (TRIM notice).  
12
- 13 \* This legislation was effective July 1, 2014 and applies to administrative reviews  
14 beginning in 2014. See Chapter 2014-150, Section 2, Laws of Florida (HB 7091).  
15  
16

### **Denials of Exemptions and Property Classifications**

17 Florida Statutes require that the property appraiser issue in writing a denial of an  
18 exemption or classification.  
19

20  
21 The denial will typically reference missing documentation that, if supplied, could qualify  
22 the taxpayer for the exemption or classification.  
23

24 The petitioner must show that the statutory criteria are satisfied to qualify for an  
25 exemption or classification.  
26

27 If an exemption or classification is denied by the property appraiser, the petitioner must  
28 file his or her petition to the Board within 30 days of that notice of denial.  
29

30 Subsection 196.193(5)(a), F.S., states the following regarding the denial of an  
31 exemption:  
32

33 *“If the property appraiser determines that any property claimed as wholly or partially*  
34 *exempt under this section is not entitled to any exemption or is entitled to an exemption*  
35 *to an extent other than that requested in the application, he or she shall notify the*  
36 *person or organization filing the application on such property of that determination in*  
37 *writing on or before July 1 of the year for which the application was filed.”*  
38

39 Subsection 196.193(5)(b), F.S., provides the following criteria for a valid denial of an  
40 exemption by the property appraiser:  
41

- 42 1. *“The notification must state in clear and unambiguous language the specific*  
43 *requirements of the state statutes which the property appraiser relied upon to deny*  
44 *the applicant the exemption with respect to the subject property.”*  
45

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1 2. *“The notification must be drafted in such a way that a reasonable person can*  
2 *understand specific attributes of the applicant or the applicant’s use of the subject*  
3 *property which formed the basis for the denial.”*

4  
5 3. *“The notice must also include the specific facts the property appraiser used to*  
6 *determine that the applicant failed to meet the statutory requirements.”*

7  
8 Under Subsection 196.193(5)(b), F.S., if a property appraiser fails to provide a notice of  
9 denial of an exemption that complies with the criteria stated above, the denial or the  
10 attempted denial of the exemption is invalid.

11  
12 \* Rule 12D-9.027(4)(a), F.A.C., provides the following regarding the administrative  
13 review of a denial of an exemption:

14  
15 *“(a) In the case of an exemption, the board or special magistrate shall consider*  
16 *whether the denial was valid or invalid and shall:*

17  
18 1. *Review the exemption denial, and compare it to the applicable statutory criteria in*  
19 *Section 196.193(5), F.S.;*

20  
21 2. *Determine whether the denial was valid under Section 196.193, F.S.; and*

22  
23 3. *If the denial is found to be invalid, not give weight to the exemption denial or to*  
24 *any evidence supporting the basis for such denial, but shall instead proceed to*  
25 *dispose of the matter without further consideration in compliance with Section*  
26 *194.301, F.S.”*

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

27  
28  
29 The administrative review process (done by Boards) is separate and different from the  
30 assessment roll production process (done by property appraisers).

31  
32  
33 The Board’s authority is limited to the review of individual petitions filed. See Spooner v.  
34 Askew, 345 So.2d 1055 (Fla. 1976).

35  
36 The Board has the limited function of reviewing and correcting individual determinations  
37 of the property appraiser. See Bath Club, Inc. v. Dade County, 394 So.2d 110 (Fla. 1981).

38  
39 Upon proper filing of a petition, a Board is authorized to conduct an administrative  
40 review of a decision by the property appraiser to deny a tax exemption or a property  
41 classification.

42  
43 \* The Board has no authority to review, on its own volition, a decision of the property  
44 appraiser to deny an exemption. See Redford v. Department of Revenue, 478 So.2d 808  
45 (Fla. 1985).

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1 The Board or special magistrate has no power to grant an exemption or property  
2 classification not authorized by law. See Rule 12D-10.003(1), F.A.C.

3  
4 The Board or special magistrate has no power to grant an exemption or property  
5 classification on the basis of hardship of a particular taxpayer. See Rule 12D-10.003(1),  
6 F.A.C.

7  
8 In considering a petition for exemption or property classification, the Board or special  
9 magistrate must not consider the ultimate amount of tax required. See Rule 12D-  
10 10.003(1), F.A.C.

11  
12 In administrative reviews regarding exemptions or classifications, Boards and special  
13 magistrates are not authorized to perform any independent factual research into  
14 attributes of the subject property or attributes of the property owner.

15  
16 Boards and special magistrates must follow the provisions of law on the administrative  
17 review of assessments. See Chapter 194, Parts 1 and 3, F.S., and Rule Chapters 12D-9, 12D-  
18 10, and 12D-16, F.A.C.

19  
20 In administrative reviews of denials of exemptions and classifications, Boards and  
21 special magistrates are bound by the same standards as property appraisers. See Rule  
22 12D-10.003(1), Florida Administrative Code. However, when observing this requirement,  
23 Boards and special magistrates must act within their scope of authority.

24  
25 In administrative reviews, Boards and special magistrates are not authorized to consider  
26 any evidence except evidence properly presented by the parties and properly admitted  
27 into the record for consideration. See Rule 12D-9.025(4)(a), F.A.C.

28  
29 In addition to admitted evidence, Boards and special magistrates are authorized to  
30 consider only the following items in administrative reviews.

- 31
- 32 1. Legal advice from the Board legal counsel;
  - 33
  - 34 2. Information contained or referenced in the Department's Uniform Policies and  
35 Procedures Manual and Accompanying Documents; and
  - 36
  - 37 3. Information contained or referenced in the Department's training for value  
38 adjustment boards and special magistrates.
  - 39
  - 40

### **Overview of Statutory Criteria**

41  
42 Boards and special magistrates, with the assistance of the Board attorney, must identify  
43 and follow the provisions of law that pertain to the administrative review of exemptions  
44 and property classifications.

45

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1 These provisions of law include statutory criteria that apply to the particular exemption  
2 or classification under administrative review. Statutory criteria do not include any factor  
3 that is not a conclusive statutory criterion.

4  
5 For purposes of this training module, “statutory criteria” means a set of statutory  
6 requirements that must be satisfied individually, by sufficient admitted evidence, to  
7 legally justify the granting of the exemption or classification by a Board or special  
8 magistrate.

9  
10 Where necessary and where the context will permit, the term “statutory criteria” includes  
11 any constitutional criteria that do not require implementation by legislation. See Rule  
12 12D-9.027(4)(g), F.A.C.

13  
14 \* Additional information on the statutory criteria for exemptions is contained in Rule  
15 Chapter 12D-7, F.A.C.

16  
17 The effective date of administrative review is January 1 of the assessment year under  
18 review. This is an essential statutory criterion. See Section 192.042, F.S.

### 19 20 21 **Standard of Proof for Administrative Reviews**

22 In administrative reviews, Boards or special magistrates must consider admitted  
23 evidence and then compare the weight of the evidence to a “standard of proof” to make  
24 a determination on an issue under review.

25  
26 Generally, the term “evidence” means something (including testimony, documents, and  
27 tangible objects) that tends to prove or disprove the existence of a disputed fact. See  
28 *Black’s Law Dictionary, Eighth Edition*, page 595.

29  
30 “Standard of proof” means the level of proof needed for the Board or special magistrate  
31 to conclude that the classification or exemption status assigned to the property is  
32 incorrect. See Rule 12D-9.027(5), F.A.C.

33  
34 The standard of proof that applies in administrative reviews of the classification or  
35 exemption status is called “preponderance of the evidence,” which means “greater  
36 weight of the evidence.” See Subsection 194.301(2)(d), F.S., and Rule 12D-9.027(5), F.A.C.

37  
38 For administrative reviews, preponderance of the evidence means greater weight of the  
39 evidence or evidence that more likely than not proves the property appraiser’s  
40 determination should be overturned and the petition granted. See Gross v. Lyons, 763  
41 So.2d 276 (Fla. 2000).

42  
43 This standard of proof is the scale by which the Board or special magistrate measures  
44 the weight (relevance and credibility) of the admitted evidence.

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1 The taxpayer shall never be required to prove that the property appraiser's  
2 determination is not supported by any reasonable hypothesis of a legal assessment.

3  
4 There is no presumption of correctness in administrative reviews of the exemption or  
5 property classification status of the property. See Subsection 194.301(2)(d), F.S.

6  
7 The party initiating the challenge has the burden of proving by a preponderance of the  
8 evidence that the classification or exemption status assigned to the property is incorrect.  
9 See Subsection 194.301(2)(d), F.S.

### **Evaluation of Evidence by the Board or Special Magistrate**

10  
11  
12 Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special  
13 magistrate must:

- 14 1. Review the evidence presented by the parties;
- 15
- 16 2. Determine whether the evidence presented is admissible;
- 17
- 18 3. Admit the evidence that is admissible;
- 19
- 20 4. Identify the evidence presented to indicate that it is admitted or not admitted; and
- 21
- 22 5. Consider the admitted evidence.
- 23
- 24
- 25

26 The term "admitted evidence" means evidence that has been admitted into the record  
27 for consideration by the Board or special magistrate. See Rule 12D-9.025(2)(a), F.A.C.

28  
29 *"No evidence shall be considered by the board or special magistrate except when*  
30 *presented and admitted during the time scheduled for the petitioner's hearing, or at a*  
31 *time when the petitioner has been given reasonable notice."* See Rule 12D-9.025(4)(a),  
32 F.A.C.

33  
34 *"If a party submits evidence to the board clerk prior to the hearing, the board or special*  
35 *magistrate shall not review or consider such evidence prior to the hearing."* See Rule  
36 12D-9.025(4)(b), F.A.C.

37  
38 Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:

- 39
- 40 1. *"As the trier of fact, the board or special magistrate may independently rule on the*  
41 *admissibility and use of evidence."*
- 42
- 43 2. *"If the board or special magistrate has any questions relating to the admissibility and*  
44 *use of evidence, the board or special magistrate should consult with the board legal*  
45 *counsel."*
- 46

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1 3. *“The basis for any ruling on admissibility of evidence must be reflected in the*  
2 *record.”*

3  
4 4. *“The special magistrate may delay ruling on the question during the hearing and*  
5 *consult with board legal counsel after the hearing.”*

6  
7 NOTE: More information on the admissibility of evidence is presented in Module 4.  
8  
9

### 10 **Sufficiency of Evidence**

11 When applied to evidence, the term “sufficient” is a test of adequacy. See Rule 12D-  
12 9.027(6), F.A.C.

13  
14 Sufficient evidence is admitted evidence that has enough overall weight, in terms of  
15 relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6),  
16 F.A.C.

17  
18 The Florida Supreme Court stated the following regarding sufficient evidence:  
19 *“Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character,*  
20 *weight, or amount, as will legally justify the judicial or official action demanded.”* See  
21 *Tibbs v. State*, 397 So.2d 1120 (Fla. 1981). Also, see *Moore v. State*, 800 So.2d 747 (Fla. 5th  
22 DCA 2001).

23  
24 A particular conclusion is justified when the overall weight of the admitted evidence  
25 meets the standard of proof that applies to the issue under consideration. See Rule 12D-  
26 9.027(6), F.A.C.

27  
28 The Board or special magistrate must consider the admitted evidence and determine  
29 whether it is sufficiently relevant and credible to reach the “preponderance of the  
30 evidence” standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-  
31 9.027(5), and 12D-9.027(6), F.A.C.

32  
33 Rule 12D-9.027(6), F.A.C., states the following in pertinent part: *“In determining*  
34 *whether the admitted evidence is sufficient for a particular issue under consideration,*  
35 *the board or special magistrate shall:*

36  
37 (a) *Consider the relevance and credibility of the admitted evidence as a whole,*  
38 *regardless of which party presented the evidence;*

39  
40 (b) *Determine the relevance and credibility, or overall weight, of the evidence;*  
41

42 (c) *Compare the overall weight of the evidence to the standard of proof;*

43  
44 (d) *Determine whether the overall weight of the evidence is sufficient to reach the*  
45 *standard of proof; and*  
46

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1 (e) *Produce a conclusion of law based on the determination of whether the overall*  
2 *weight of the evidence has reached the standard of proof.”*  
3

4 For administrative reviews of denials of exemptions and classifications, “relevant  
5 evidence” is evidence that is reasonably related, directly or indirectly, to the statutory  
6 criteria that apply to the petitioned property or the property owner, as applicable. See  
7 Rule 12D-9.025(2)(b), F.A.C.  
8

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

14 In evaluating the relevance of evidence, the Board or special magistrate must consider,  
15 as of the January 1 assessment date, how well the evidence relates to the petitioned  
16 property or the property owner, as applicable, and to the statutory criteria that apply.  
17

18 For administrative reviews, “credible evidence” means evidence that is worthy of belief  
19 (believable). See *Black’s Law Dictionary, Eighth Edition*, page 596.  
20

21 NOTE: More information on evaluating the relevance and credibility of evidence is  
22 presented in Module 11 of this training.  
23

### 24 **PART 2: Administrative Reviews of Denials of Exemptions**

25  
26  
27 The sections below contain information on the administrative review of denials of  
28 exemptions, including information on the statutory criteria for exemptions.  
29

#### 30 **The Administrative Review Process for Denials of Exemptions**

31 Set forth below is a sequence of general procedural steps for Boards and special  
32 magistrates to follow in administrative reviews of denials of exemptions in order to fulfill  
33 the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(4), F.A.C.  
34  
35

36 This sequence of steps applies to: the consideration of evidence, the development of  
37 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.  
38

39 *“The board or special magistrate shall not be required to make, at any time during a*  
40 *hearing, any oral or written finding, conclusion, decision, or reason for decision.”* See  
41 Rule 12D-9.025(9), F.A.C.  
42

43 *“The board or special magistrate has the discretion to determine whether to make such*  
44 *determinations during a hearing or to consider the petition and evidence further after the*  
45 *hearing and then make such determinations.”* See Rule 12D-9.025(9), F.A.C.  
46

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1 Under Rule 12D-9.027(4), F.A.C., in administrative reviews of denials of exemptions,  
2 the Board or special magistrate shall follow this sequence of general procedural steps:

3  
4 1. In the case of an exemption, the Board or special magistrate shall consider whether  
5 the denial was valid or invalid and shall:

6  
7 \* Review the exemption denial, and compare it to the applicable statutory criteria in  
8 Section 196.193(5), F.S.;

9  
10 \* Determine whether the denial was valid under Section 196.193, F.S.; and

11  
12 \* If the exemption denial is found to be invalid, not give weight to the exemption  
13 denial or to any evidence supporting the basis for such denial, but shall instead  
14 proceed to dispose of the matter without further consideration in compliance with  
15 Section 194.301, F.S.

16  
17 2. If the exemption denial is found to be valid, the Board or special magistrate shall  
18 proceed with the following steps:

19  
20 \* Consider the admitted evidence presented by the parties;

21  
22 \* Identify the particular exemption issue that is the subject of the petition;

23  
24 \* Identify the statutory criteria that apply to the particular exemption that was  
25 identified as the issue under administrative review;

26  
27 \* Identify and consider the essential characteristics of the petitioned property or the  
28 property owner, as applicable, based on the statutory criteria that apply to the  
29 issue under administrative review;

30  
31 \* Identify and consider the basis used by the property appraiser in issuing the  
32 exemption denial for the petitioned property; and

33  
34 \* Determine whether the admitted evidence proves by a preponderance of the  
35 evidence that the property appraiser's denial is incorrect and the exemption  
36 should be granted because all of the applicable statutory criteria are satisfied.

37  
38 The Board or special magistrate must decide whether the admitted evidence, regardless  
39 of which party presented the evidence, has sufficient weight (in relevance and  
40 credibility) to legally justify overturning the property appraiser's original determination  
41 and granting the exemption.

42  
43 If the admitted evidence proves the petitioner's case by the greater weight of the  
44 evidence, the original determination must be overturned and the petition granted.  
45

1 If the admitted evidence does not legally justify overturning the property appraiser's  
2 original determination, the determination must be upheld.

### 3 4 5 **Statutory Criteria for Exemptions**

6 This section contains information regarding the statutory criteria that must be met to  
7 qualify for the various exemptions available in Florida.

- 8  
9 \* In the case of the more common exemptions, this training presents more detail on  
10 the applicable statutory criteria.  
11  
12 \* Less common exemptions will simply be mentioned so that users of this training are  
13 aware of their existence, and a citation will be provided so users can read the  
14 statutory criteria when one of the less common exemptions arises.  
15

### 16 17 **Statutory Criteria for Different Types of Personal Exemptions**

18 The statutory criteria that apply to several types of personal exemptions are presented  
19 below under their respective headings.  
20

### 21 22 **Homestead Exemption: Qualifications and Benefits**

23 Homestead is established on January 1 of each tax year. In order to qualify for the  
24 homestead exemption an individual must:

- 25  
26 \* Have legal or beneficial title to the property which is demonstrated by a deed or  
27 instrument on file in the public records; and  
28  
29 \* Make the property their permanent residence, or the permanent residence of a  
30 person legally or naturally dependent upon the individual.  
31

32 Homestead property receives:

- 33  
34 \* An exemption of \$25,000 from all levies.  
35  
36 \* An additional exemption of up to \$25,000 on the assessed valuation greater than  
37 \$50,000 for all levies other than school district levies.  
38  
39 \* A limitation on assessments under the Save Our Homes provisions.  
40  
41 \* Eligibility for additional exemptions that are available only on homestead properties.  
42 See section 196.031, F.S.  
43

44 See also Rule 12D-7.0142, F.A.C.  
45

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1 Note: Legislation enacted in 2022 amended section 196.031, F.S., to create a new  
2 subsection (5) which provides for purposes of applying exemptions listed in that section,  
3 exempt real property includes portions of the real property and contiguous real property  
4 assessed solely on the basis of character or use pursuant to sections 193.461 or  
5 193.501, F.S., or assessed pursuant to section 193.505, F.S. The amendments do not  
6 affect the provisions in section 193.155, F. S., limiting the application of that section to  
7 the residence and curtilage. The amendments to section 196.031, F.S. are intended to  
8 be remedial and clarifying in nature and apply retroactively, but do not create a right to a  
9 refund of any tax paid before the effective date of July 1, 2022. See Chapter 2022-97,  
10 Sections 5 and 6, Laws of Florida, (CS/HB 7071), effective July 1, 2022.

### 11 12 13 **Homestead Exemption: Permanent Residence**

14 Permanent residence means that place where a person has his or her true, fixed, and  
15 permanent home and principal establishment to which, whenever absent, he or she has  
16 the intention of returning.

17  
18 A person may have only one permanent residence at a time, and once a permanent  
19 residence is established in a foreign state or country, it is presumed to continue until the  
20 person shows that a change has occurred. See section 196.012(17), F.S.

21  
22 Intention to establish a permanent residence in Florida is a factual determination to be  
23 made, in the first instance, by the property appraiser.

24  
25 Section 196.015, F.S., provides factors the property appraisers may consider in making  
26 this determination.

27  
28 Although any one factor is not conclusive of the establishment or non-establishment of  
29 permanent residence, the following are relevant factors that may be considered by the  
30 property appraiser in making his or her determination about the intent of a person  
31 claiming a homestead exemption to establish a permanent residence in Florida:

- 32  
33 \* Formal declaration of domicile by the applicant recorded in the public records of the  
34 county where the exemption is sought;  
35  
36 \* Where the applicant's dependent children are registered for school;  
37  
38 \* The place of employment of the applicant;  
39  
40 \* The previous permanent residency by the applicant in a state other than Florida or in  
41 another country and the date non-Florida residency was terminated;  
42  
43 \* Proof of voter registration at the place for which the exemption is being sought;  
44  
45 \* A valid Florida driver's license or identification card and evidence of relinquishment  
46 of driver's license from another state;

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- 1
- 2 \* The issuance of a license tag on any motor vehicle owned by the applicant;
- 3
- 4 \* The address as listed on federal income tax returns filed by the applicant;
- 5
- 6 \* The location where the applicant's bank statements and checking accounts are
- 7 registered; and
- 8
- 9 \* Proof of payment of utilities at the location where residence is being claimed.
- 10 See section 196.015, F.S.
- 11
- 12

### **Homestead Exemption: Rental**

14 See section 196.061, F.S.

15 Rental of all or substantially all of a dwelling previously claimed to be a homestead for  
16 tax purposes constitutes abandonment of the dwelling as a homestead, when the  
17 property is rented for more than 30 days per calendar year for two consecutive years.

18  
19 Abandonment continues until the dwelling is physically occupied by the owner.

20  
21 **Note:** Legislation enacted in 2013 provides that rental of the homestead after January  
22 1 of any year does not affect the homestead exemption for tax purposes for that  
23 particular year unless the property is rented for more than 30 days per calendar year for  
24 two consecutive years. These changes were effective July 1, 2013, and apply to  
25 assessments and administrative reviews beginning in 2014. See Chapter 2013-64, Laws  
26 of Florida (SB 342).

27  
28 This provision does not apply to a member of the Armed Forces of the United States  
29 whose service in such forces is the result of a mandatory obligation imposed by the  
30 federal Selective Service Act or who volunteers for service as a member of the Armed  
31 Forces of the United States.

### **Homestead Exemption: Additional Exemption for Low Income Seniors**

34 The Board of County Commissioners of a county or the governing authority of a  
35 municipality may adopt an ordinance to allow an additional homestead exemption of up  
36 to \$50,000 for any person who has the legal or equitable title to real estate and  
37 maintains thereon the permanent residence of the owner, and who:

- 39
- 40 \* Has the legal or equitable title to real estate;
- 41 \* Uses that real estate as their permanent residence;
- 42 \* Is age 65, or older; and
- 43 \* Whose household income does not exceed \$20,000, adjusted annually, beginning  
44 January 1, 2001, by the percentage change in the average cost-of-living index.
- 45

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1 ~~For the 2018 assessment year, the 2017 adjusted gross household income to qualify for~~  
2 ~~this exemption is \$29,454 or less.~~

3  
4 For the 2019 assessment year, the 2018 adjusted gross household income to qualify for  
5 this exemption is \$30,174 or less.

6  
7 For the 2020 assessment year, the 2019 adjusted gross household income to qualify for  
8 this exemption is \$30,721 or less.

9  
10 For the 2021 assessment year, the 2020 adjusted gross household income to qualify for  
11 this exemption is \$31,100 or less.

12  
13 For the 2022 assessment year, the 2021 adjusted gross household income to qualify for  
14 this exemption is \$32,561 or less. See section 196.075, F.S., and Rule 12D-7.0143, F.A.C.

15  
16 **Note:** An amendment approved by the voters in the November 2012 general election  
17 added a local option of up to an additional \$50,000 exemption for low income seniors  
18 that have maintained a permanent residence on the property for at least 25 years. See  
19 section 196.075, F.S.

20  
21 **Note:** Legislation enacted in 2021 amended section 196.075(4)(d), and (5), Florida  
22 Statutes, which provides an additional homestead exemption for persons 65 and older.  
23 The amendment to section 196.075(4)(d), F.S., requires an ordinance enacted by a  
24 local government authorizing an additional homestead exemption for low-income  
25 seniors must require the taxpayer to submit a sworn statement of household income  
26 when claiming the exemption for the first time. The amendment to section 196.075(5),  
27 F.S., provides that the property appraiser notifies each taxpayer of the adjusted income  
28 limitation each year. The taxpayer must respond by May 1 if their income exceeds the  
29 limitation. The property appraiser may conduct random audits of the taxpayers' sworn  
30 statements. See Chapter 2021-208, Section 1, Laws of Florida, (HB 597), effective July 1,  
31 2021.

### 32 33 34 **Homestead Exemption: Save Our Homes**

35 Relating to exemptions, the primary limitation on assessment increases is the Save Our  
36 Homes Amendment limitation which caps assessment increases on homestead  
37 property at the lesser of 3 percent or the percentage change in the consumer price  
38 index.

39  
40 When applied to the just value assessment in the initial year when homestead is  
41 established, any subsequent increases in that assessment are capped.

42  
43 Property is reassessed on the transfer of the homestead property.  
44

### 45 46 **Homestead Exemption: Damaged or Destroyed Property**

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1 See section 196.031(6), F.S.

2 A homestead exemption may be granted to damaged or destroyed property that is  
3 otherwise qualified if the property owner notifies the property appraiser that he or she  
4 intends to repair or rebuild the property and live in the property as his or her primary  
5 residence after the property is repaired or rebuilt and does not claim a homestead  
6 exemption on any other property.

7  
8 Failure by the property owner to begin the repair or rebuilding of the homestead  
9 property within three years after January 1 following the year the property was damaged  
10 or destroyed constitutes abandonment of the property as a homestead.

11  
12 Note: Legislation enacted in 2022 created provisions for refund of taxes a prorated  
13 refund of property taxes for residential property rendered uninhabitable for 30 days or  
14 more due to a catastrophic event in 2023 or thereafter. Also enacted was retroactive  
15 property tax relief to parcel owners affected by a sudden and unforeseen collapse of a  
16 multistory residential building with at least 50 dwelling units, applicable retroactively to  
17 January 1, 2021. See Module 6 of this training for more information regarding  
18 catastrophic events and sudden and unforeseen collapses.

19

20

### 21 **Homestead Exemption: Living Quarters for Parents or Grandparents**

22 This exemption is found in Section 193.703, F.S. It applies to construction or  
23 reconstruction of a homestead intended to provide living quarters for the owner's parent  
24 or grandparent.

25

26 The qualifications for this exemption are:

27

- 28 \* The parent or grandparent must be 62 or older;
- 29 \* The parent or grandparent must be the natural or adoptive parent or grandparent of  
30 an owner of the homestead or of an owner's spouse;
- 31 \* Application must be made by March 1;
- 32 \* Reconstruction or construction must have been made to an existing homestead  
33 property; and
- 34 \* The parent or grandparent must make their primary place of residence on the  
35 property and cannot qualify for a separate homestead exemption.

36

37 If a taxpayer qualifies under the statute, the exemption from taxation is limited to an  
38 amount not to exceed:

39

- 40 \* Twenty percent of the total assessed value of the property as improved; or
- 41 \* The increase in value resulting from the construction or reconstruction.

42

43

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### 1 **Homestead Exemption: Totally and Permanently Disabled Persons**

2 See section 196.101, F.S.

3 In order to qualify for a total exemption on their homestead a person must have a  
4 qualifying household income (~~the 2017 household income cannot exceed \$28,713 for~~  
5 ~~the 2018 assessment year~~, the 2018 household income cannot exceed \$29,415 for the  
6 2019 assessment year, the 2019 household income cannot exceed \$29,948 for the  
7 2020 assessment year, ~~and~~ the 2020 household income cannot exceed \$30,317 for the  
8 2021 assessment year, and the 2021 household income cannot exceed \$31,741 for the  
9 2022 assessment year) and the applicant must be:

- 10 \* Paraplegic;
- 11 \* Hemiplegic;
- 12 \* Legally blind; or
- 13 \* Totally and permanently disabled and dependent on a wheelchair for mobility.

14  
15  
16 Persons who are quadriplegic qualify for a total exemption on their homestead without  
17 meeting the income limitation.

18  
19 Totally and permanently disabled persons who do not qualify for a total exemption can  
20 receive a \$500 exemption under Section 196.202, F.S. This \$500 exemption is also  
21 granted to widows, widowers, and blind persons.

22  
23 Note: Legislation enacted in 2022 amended section 196.202(1), F.S., to increase the  
24 exemptions for bona fide Florida residents who are widows, widowers, blind, or totally  
25 and permanently disabled from \$500 to \$5,000, for each exemption. The increase first  
26 applies to the 2023 tax roll. See Chapter 2022-97, Sections 12 and 13, Laws of Florida,  
27 (CS/HB 7071), effective January 1, 2023.

### 28 29 30 **Exemptions for Veterans**

31 See sections 196.081, 196.082, 196.091, and 196.24, F.S.

32 Any ex-service member (or qualified surviving spouse) who meets the three criteria  
33 below shall receive a \$5,000 exemption on their property:

- 34
- 35 \* Is a bona fide resident of the state;
- 36 \* Was discharged under honorable conditions; and
- 37 \* Has been disabled to a degree of 10 percent or higher.

38  
39 Any ex-service member (or qualified surviving spouse) requiring specially adapted  
40 housing and required to use a wheelchair for his or her transportation shall be exempt  
41 from taxation on his or her homestead when he or she meets the following criteria:

- 42
- 43 \* Was honorably discharged with a service-connected total disability certificate; and
- 44 \* Is receiving or has received "special pecuniary assistance".

45

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1 Any totally and permanently disabled veteran or qualified surviving spouse shall be  
2 exempt from taxation on his or her homestead when he or she meets the following  
3 criteria:

- 4
- 5 \* Was honorably discharged with a service-connected total and permanent disability;  
6
- 7 \* Was issued a letter from the United States Government or United States Department  
8 of Veterans Affairs or its predecessor certifying that the veteran is totally and  
9 permanently disabled; and
- 10
- 11 \* Was a permanent resident of the State of Florida on January 1 of the year in which  
12 the exemption is being claimed (or was a permanent resident on January 1 of the  
13 year of their death).
- 14

15 This exemption is also granted to the qualified surviving spouse of a veteran who dies  
16 during active duty from service-connected causes provided that the veteran was a  
17 permanent resident of the State of Florida on January 1 of the year he or she died.  
18

19 **Note:** Legislation enacted in 2018 amended section 196.24, F.S., relating to  
20 qualification for an exemption, to remove the statutory requirement for an unremarried  
21 surviving spouse to have been married to a disabled veteran for at least five years on  
22 the date of the veteran's death. See Chapter 2018-118, Section 16, Laws of Florida (CS/HB  
23 7087).

24

25 **Note:** Legislation enacted in 2020 created section 196.081(1)(b), F.S. to provide that a  
26 veteran or veteran's surviving spouse may receive a prorated refund of property taxes  
27 paid on property on which legal or beneficial title is acquired between January 1 and  
28 November 1. The additional requirements for the refund are that the veteran or  
29 veteran's surviving spouse:

- 30 • receives an exemption under section 196.081, F.S., on a property for the tax  
31 year, and
- 32 • applies for and receives an exemption on the acquired property in the next tax  
33 year under section 196.081, F.S.

34 The refund is prorated as of the date of transfer. If the property appraiser determines  
35 the veteran or spouse is entitled to an exemption under section 196.081, F.S., on the  
36 newly acquired property, the law provides for the property appraiser to make entries on  
37 the tax roll necessary to allow the prorated refund of taxes for the previous tax year. See  
38 Chapter 2020-140, Laws of Florida (CS/CS/HB 1249), effective July 1, 2020.  
39  
40

### **Exemption for Veterans: Discount for Disabled Veterans**

42 See section 196.082, F.S.

43 In addition to the exemptions listed previously, there is a discount on taxes due on  
44 homestead property available to disabled veterans. In order to qualify, the veteran must  
45 meet the following criteria:  
46

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- 1 \* Be 65 or older;
- 2 \* Have a combat-related disability; and
- 3 \* Have been honorably discharged.

4  
5 When a veteran is qualified, the property appraiser shall apply all exemptions to which  
6 the veteran is entitled to the property value, calculate the taxes due on the property, and  
7 then reduce the taxes due by the veteran's percentage of disability.

8  
9

### 10 **Exemption for Deployed Servicemembers Beginning in 2011**

11 The 2011 Legislature enacted an exemption for certain servicemembers who receive a  
12 homestead exemption and who are deployed in certain military operations to receive an  
13 additional ad valorem tax exemption.

14

15 \* The percentage exempt under the exemption is calculated as the number of days  
16 the servicemember was deployed during the previous calendar year, divided by the  
17 number of days in that year, multiplied by 100.

18

19 \* It applies to both the school and county taxable values, and applies beginning in the  
20 2011 tax year.

21

22 \* See Chapter 2011-93, Laws of Florida (effective May 31, 2011), creating Section  
23 196.173, F.S.

24

25 \* See also Rule 12D-7.0055, F.A.C.

26

27 Note: The 2022 Legislature amended section 196.173, F.S., relating to the exemption  
28 for deployed servicemembers, to remove Operation Observant Compass, which began  
29 in October 2011. The amendment added Operation Enduring Freedom - Horn of Africa,  
30 which began in January 2015, and added European Reassurance Initiative/ European  
31 Deterrence Initiative, which began in 2014. These amendments apply to the 2022 ad  
32 valorem tax roll. See Chapter 2022-97, Sections 7, 8, and 9, Laws of Florida, (CS/HB 7071),  
33 effective May 6, 2022.

34

35 ~~Note: The 2020 Legislature amended section 196.173, F.S., relating to the exemption~~  
36 ~~for deployed servicemembers, to remove Operation Enduring Freedom, which began~~  
37 ~~October 7, 2001, and ended December 31, 2014. The amendment added Operation~~  
38 ~~Juniper Shield, which began in February 2007; Operation Pacific Eagle, which began in~~  
39 ~~September 2017, and Operation Martillo, which began in January 2012. After these the~~  
40 ~~amendments, this legislation retained the following military operations on the list:~~

41

- 42 • Operation Joint Task Force Bravo, which began in 1995.
- 43 • Operation Joint Guardian, which began on June 12, 1999.
- 44 • Operation Noble Eagle, which began on September 15, 2001.
- 45 • Operations in the Balkans, which began in 2004.
- 46 • Operation Nomad Shadow, which began in 2007.

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- 1 • Operation U.S. Airstrikes Al Qaeda in Somalia, which began in January 2007.
- 2 • Operation Juniper Shield, which began in February 2007.
- 3 • Operation Copper Dune, which began in 2009.
- 4 • Operation Georgia Deployment Program, which began in August 2009.
- 5 • Operation Spartan Shield, which began in June 2011.
- 6 ~~• Operation Observant Compass, which began in October 2011.~~
- 7 • Operation Martillo, which began in January 2012.
- 8 • Operation Inherent Resolve, which began on August 8, 2014.
- 9 • Operation Atlantic Resolve, which began in April 2014.
- 10 • Operation Freedom's Sentinel, which began on January 1, 2015.
- 11 • Operation Resolute Support, which began in January 2015.
- 12 • Operation Pacific Eagle, which began in September 2017.
- 13 • Operation Enduring Freedom - Horn of Africa, which began in January 2015
- 14 • European Reassurance Initiative/ European Deterrence Initiative, which began in
- 15 2014.

16  
17 ~~See Chapter 2020-10, Sections 7 and 8, Laws of Florida, (HB 7097), effective upon becoming a~~  
18 ~~law on April 8, 2020, and first applicable to the 2020 ad valorem tax roll, and Chapter 2018-118,~~  
19 ~~Section 15, Laws of Florida (CS/HB 7087).~~

- 20
- 21 • This exemption is also available to servicemembers who were deployed during
- 22 the preceding calendar year on active duty outside the continental United States,
- 23 Alaska, or Hawaii in support of a subordinate operation to a main operation
- 24 designated in section 196.173(2), F.S.
- 25
- 26

### 27 **Exemptions for First Responders Who Were Totally and Permanently** 28 **Disabled in the Line of Duty, and For Surviving Spouses**

29 Section 196.081, F.S., provides an exemption for surviving spouses of first responders  
30 who die in the line of duty. See Chapter 2012-54, Laws of Florida (CS/HB 95).

31  
32 **Note:** Legislation enacted in 2017 created section 196.102, F.S., to: provide an  
33 exemption for certain first responders whose total and permanent disability occurred in  
34 the line of duty, and for surviving spouses; extend the exemption application deadline  
35 for 2017 to August 1, 2017, or later if extenuating circumstances are shown; and  
36 provide for petitions to the value adjustment board for denials of such exemptions. This  
37 change was effective June 14, 2017, and applies to assessments and administrative  
38 reviews beginning in 2017. See Chapter 2017-105, Sections 2 and 3, Laws of Florida (CS/HB  
39 455).

### 40 41 42 **Statutory Criteria for Different Types of Institutional Exemptions**

43 These exemptions apply to property other than homestead property. The exemption can  
44 be based either on the ownership of the property, such as governmental property, or the  
45 use of the property, such as educational exemptions.

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1  
2 Because of the number of these exemptions, most of the exemptions will not be  
3 discussed in detail. Instead a statutory reference will be provided so the requirements of  
4 that exemption can be found easily.

5  
6 The statutory criteria that apply to several types of personal exemptions are presented  
7 below under their respective headings.

8  
9

### 10 **Government Property**

11 See section 196.199, F.S.

12 Governmental property can be immune to taxation, exempt from taxation, or taxable.

13  
14 Property that is immune from taxation is property that the taxing authority has no ability  
15 to tax.

16  
17 Property that is exempt is property that the state, through its constitution, statutes, and  
18 local ordinances, has chosen not to tax.

19  
20 Property belonging to the federal government is immune from taxation.

21  
22 State and county property is also immune from taxation and cannot be taxed unless  
23 immunity has been waived.

24  
25 Municipal property and property belonging to most special districts is exempt from  
26 taxation as long as it is being used for municipal or other exempt purposes.

27  
28 **Note:** Legislation enacted in 2014 moved the exemption for special districts to newly  
29 created section 189.055, F.S., from section 189.403, F.S. See Chapter 2014-22, Section  
30 53, Laws of Florida (SB 1632).

31  
32 Governmental property leased to non-governmental entities may become taxable under  
33 section 196.199, F.S.

34  
35 **Note:** Legislation enacted in 2018 amended section 163.01, F.S. to clarify that the  
36 property tax exemption in this statute applies whether the property is within or outside  
37 the jurisdiction of the legal entity that owns it. The amendment also clarifies that the  
38 exemption applies regardless of whether the legal entity enters into agreements with  
39 private entities to manage, operate or improve the utilities the separate entity owns. See  
40 Chapter 2018-118, Section 7, Laws of Florida (CS/HB 7087).

41  
42 **Note:** Legislation enacted in 2015 added section 196.199(1)(a)2., F.S., to provide an  
43 ad valorem tax exemption for a leasehold interest in and improvements affixed to land  
44 owned by the United States, any branch of the United States Armed Forces, or any  
45 agency or quasi-governmental agency of the United States if the leasehold and  
46 improvements are acquired or constructed and used pursuant to the federal Military

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1 Housing Privatization Initiative of 1996. Any such leasehold interest and improvements  
2 are exempt from ad valorem taxation regardless of whether title is held by the United  
3 States and without necessity of filing an application for the exemption or receiving  
4 approval from the property appraiser. This act defines “improvements” to include actual  
5 housing units and any facilities that are directly related to such housing units, including  
6 any housing maintenance facilities, housing rental and management offices, parks and  
7 community centers, and recreational facilities. This law applies retroactively to January  
8 1, 2007. See Chapter 2015-80, Section 1, Laws of Florida (CS for CS for HB 361).

### 9 10 11 **Exempt Entities**

12 See Sections 196.192, 196.193, 196.194, 196.195, and 196.196, F.S.

13 Exempt entities are nonprofit ventures which serve a charitable, religious, scientific, or  
14 literary purpose.

15  
16 All property owned by an exempt entity and used exclusively for an exempt purpose is  
17 totally exempt.

18  
19 Property owned by an exempt entity and used primarily for an exempt purpose is  
20 exempt to the extent that the ratio of such predominate use bears to the non-exempt  
21 use.

22  
23 Tangible personal property loaned to an exempt entity for public display or exhibition on  
24 a recurring schedule for no, or nominal, consideration, is exempt.

25  
26 **Note:** Legislation enacted in 2021 amended section 196.196(2), Florida Statutes, to  
27 provide that portions of a property that are not predominantly used for charitable,  
28 religious, scientific, or literary purposes are not exempt from taxation, and that an  
29 exemption for the portions of property used for charitable, religious, scientific, or literary  
30 purposes is not affected so long as the predominant use of such property is for charitable,  
31 religious, scientific, or literary purposes. The amendment applies to taxable years  
32 beginning on or after January 1, 2022, and does not provide a basis for an assessment  
33 of any tax not paid or create a right to a refund or credit of any tax paid before July 1,  
34 2021. See Chapter 2021-31, Sections 8 and 9, Laws of Florida, (HB 7061), effective July 1,  
35 2021 and applicable beginning January 1, 2022.

### 36 37 38 **Lands Used for Conservation Purposes**

39 Section 196.26, F.S., provides a new exemption for the 2010 tax year for “real property  
40 dedicated in perpetuity for conservation purposes”.

41  
42 In order to qualify for this exemption, the parcel of land must:

- 43  
44 \* Be subject to an easement which dedicates the land in perpetuity for conservation  
45 purposes; and  
46

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1 \* Be at least 40 acres in size or “fulfill a clearly delineated state conservation policy  
2 and yield a significant public benefit”.

3  
4 If the land is used exclusively for conservation purposes it is exempt from ad valorem  
5 taxation.

6  
7 If the land is used for allowed commercial purposes, the land receives an exemption  
8 equal to 50 percent of the land’s assessed value.

9  
10 **Note:** Legislation was enacted in 2016 to amend section 196.011(6)(b), F.S., to provide  
11 that once the property appraiser has granted an original application for this exemption,  
12 the property owner is not required to file a renewal application until the property’s use  
13 no longer complies with the restrictions and requirements of the conservation easement.  
14 See Chapter 2016-110, Laws of Florida (CS/SB 190).

### 15 16 17 **Specific Educational Exemptions**

18 Charter school property receives an exemption in Section 196.1983, F.S.

19  
20 **Note:** Legislation enacted in 2017 amended section 196.1983, F.S., to clarify  
21 provisions requiring landlords to reduce lease payments made by charter schools so  
22 that the schools receive the full benefit derived by the landlord from the exemption,  
23 effective retroactively to January 1, 2017. See Chapter 2017-36, section 7, Laws of Florida  
24 (HB 7109).

25  
26 Gold Seal Quality Child Care Centers are exempt as educational institutions. Section  
27 402.26, F.S.

28  
29 College sororities and fraternities can be exempt under section 196.198, F.S.

30  
31 Section 196.198, F.S., also specifically exempts sheltered workshops providing  
32 rehabilitation and retraining to disabled individuals.

33  
34 **Note:** Legislation enacted in 2013 amended Section 196.198, F.S, to include an  
35 additional form of ownership that qualifies for the educational property exemption.

36  
37 \* Property used exclusively for educational purposes is deemed owned by an  
38 educational institution and qualifies for the educational property exemption if the  
39 entity that owns 100 percent of the educational institution and the entity that owns  
40 the property are owned by the identical natural persons.

41  
42 **Note:** Legislation enacted in 2021 amended section 196.198, Florida Statutes,  
43 educational property exemption, to provide that land, buildings, and other improvements  
44 used exclusively for educational purposes shall be deemed owned by an educational  
45 institution if the educational institution that currently uses the land, buildings, and other  
46 improvements for educational purposes is an educational institution described under s.

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1 212.0602, F.S, and, under a lease, the educational institution is responsible for any  
2 taxes owed and for ongoing maintenance and operational expenses for the land,  
3 buildings, and other improvements. The owner of the property must disclose to the  
4 educational institution the full amount of the benefit derived from the exemption and the  
5 method for ensuring the educational institution receives the benefit so that the  
6 educational institution receives the full benefit of the exemption. Also, property owned  
7 by a house of public worship and used by an educational institution for educational  
8 purposes limited to students in preschool through grade 8 is exempt. The amendment  
9 relating to property owned by a house of public worship is remedial and clarifying in  
10 nature and applies to actions pending as of July 1, 2021. See Chapter 2021-31, Sections 11  
11 and 12, Laws of Florida, (HB 7061), effective July 1, 2021.  
12  
13

### 14 **Exemptions for Tangible Personal Property**

15 Beginning in 2008, the first \$25,000 of tangible personal property listed on each return  
16 is exempt. See section 196.183, F.S.  
17

18 \* See also Rule 12D-7.019, F.A.C.  
19

20 Household goods and personal effects are exempt. See section 196.181, F.S.  
21

22 Inventory is exempt. See section 196.185, F.S.  
23

24 **Note:** Legislation enacted in 2017 amended section 192.001(11)(c), F.S., to clarify that  
25 the term “inventory” includes specified construction and agricultural equipment weighing  
26 1,000 pounds or more that is returned to a dealership under a rent-to-purchase option  
27 and held for sale to customers in the ordinary course of business. This change was  
28 effective July 1, 2017, and applies to assessments and administrative reviews beginning  
29 in 2018. See Chapter 2017-36, Sections 2 and 59, Laws of Florida (HB 7109).  
30  
31

### 32 **Other Exemptions**

33 Labor organization property. See section 196.1985, F.S.  
34

35 Affordable housing. See section 196.1978, F.S.  
36

37 **Note:** Legislation enacted in 2022 amended section 196.1978(2)(a), F.S., to specify the  
38 method of calculating the 15-year waiting period for an affordable housing exemption for  
39 a multifamily project. The 15 years is calculated based on the earliest of three (3) dates:

- 40 1. The effective date of the recorded agreement with the Florida Housing Finance  
41 Corporation,
- 42 2. The first day of the first taxable year in which the property was placed in service  
43 as an affordable housing property, or
- 44 3. The date the property received a certificate of occupancy or certificate of  
45 substantial completion, allowing the property to be used as affordable housing.

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1 This amendment first applies to the 2023 tax roll. See Chapter 2022-97, Sections 10, 11 and  
2 55, Laws of Florida, (CS/HB 7071), effective July 1, 2022.

3  
4 **Note:** Legislation enacted in 2021 amended section 196.1978(2), Florida Statutes,  
5 affordable housing property exemption, removing the ad valorem tax discount of 50  
6 percent and enacting an exemption of 100 percent on multifamily projects that provide  
7 housing to extremely-low-income, very-low-income, or low-income families. Such a  
8 multifamily project will receive the exemption beginning on January 1 of the year  
9 following the 15th year of such an agreement. See Chapter 2021-31, Section 10, Laws of  
10 Florida, (HB 7061), effective July 1, 2021.

11  
12 **Note:** The 2020 Legislature enacted two amendments to section 196.1978(1), F.S. in  
13 Chapter 2020-10, section 10, Laws of Florida, effective upon becoming a law April 8,  
14 2020 and operating retroactive to January 1, 2020; and Chapter 2020-10, section 11,  
15 Laws of Florida, effective January 1, 2021.

- 16 • Section 10 amended section 196.1978(1), F.S., to provide, for property used to  
17 provide affordable housing, additional criteria under which vacant units are  
18 treated as exempt portions of the affordable housing property. These criteria are:  
19 if a recorded land use restriction agreement requires all residential units within  
20 the property to be used in a manner that qualifies for the exemption under this  
21 subsection and if the vacant units are being offered for rent. effective upon  
22 becoming a law and will operate retroactively to January 1, 2020. See chapter  
23 2020-10, Section 10, Laws of Florida (CS/HB 7097).
- 24 • Section 11 amended section 196.1978(1), F.S., to provide legislative intent for  
25 property used to provide affordable housing, that if the sole member of a limited  
26 liability company that owns the property is also a limited liability company that is  
27 disregarded as an entity for federal income tax purposes, the property will be  
28 treated as owned by the sole member of the limited liability company that owns  
29 the limited liability company that owns the property. Also, units whose occupants'  
30 income no longer meet the income limits, but whose income met the income  
31 limits at the time they became tenants, shall be treated as exempt portions of the  
32 affordable housing property. This amendment is effective January 1, 2021. See  
33 Chapter 2020-10, Section 11, Laws of Florida (CS/HB 7097).

34  
35 **Note:** Legislation enacted in 2017 amended section 196.1978(2), F.S., to provide a 50  
36 percent discount on property taxes for specified portions of certain multifamily properties  
37 that offer affordable housing to specified low-income persons and families, if application  
38 is made by March 1. This amendment also specifies procedures for the application of  
39 the discount and provides conditions for the termination of the discount. The  
40 amendment is effective starting in 2018. See Chapter 2017-36, Section 6, Laws of Florida  
41 (HB 7109).

42  
43 Community centers. See section 196.1986, F.S.

44  
45 Historic properties. See section 196.1997, F.S.

46

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1 Historic properties open to the public. See section 196.1998, F.S.

2

3 Not for profit sewer and water companies. See section 196.2001, F.S.

4

5 Section 501(c)(12), I.R.C., not-for-profit water and wastewater systems. See section  
6 196.2002, F.S.

7

8 Historic property used for certain commercial or nonprofit purposes. See section 196.1961,  
9 F.S.

10

11 New and expanding businesses. See section 196.1995, F.S.

12

13 Renewable energy source devices. See section 196.182, F.S.

14

15 **Note:** Legislation enacted in 2017 created section 196.182, F.S., to provide an  
16 exemption, from the tangible personal property tax, of 80 percent of the assessed value  
17 of certain renewable energy source devices, if the device, as defined in s. 193.624, is  
18 considered tangible personal property and:

19 (a) Is installed on real property on or after January 1, 2018;

20 (b) Was installed before January 1, 2018, to supply a municipal electric utility located  
21 within a consolidated government; or

22 (c) Was installed after August 30, 2016, on municipal land as part of a described  
23 project supplying a municipal electric utility for certain purposes.

24

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

30

31 **Note:** Legislation enacted in 2014 amended section 196.1995, F.S., to provide that, in  
32 order to qualify for the economic development exemption, the improvements to real  
33 property must be made or the tangible personal property must be added or increased  
34 after approval by motion or resolution of the local governing body, subject to ordinance  
35 adoption, or on or after the day the ordinance is adopted.

36

37 \* This legislation was effective May 12, 2014, and applies to assessments and  
38 administrative reviews beginning in 2015. See Chapter 2014-40, Section 1, Laws of  
39 Florida (HB 7081).

40

41 **Note:** Legislation enacted in 2016 amended sections 196.012 and 196.1995, F.S, to  
42 provide:

43

44 • Language to describe the new businesses and expansions of existing businesses  
45 that are eligible to receive the economic development property tax exemption. It  
46 states that the new businesses and expansions of existing businesses that are in

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1 areas that were designated as enterprise zones under Ch. 290, F.S., as of  
2 December 30, 2015, but not in a brownfield area, may qualify for the property tax  
3 exemption only if the local governing body approves by motion or resolution, subject  
4 to ordinance adoption, or by ordinance enacted before December 31, 2015.  
5

- 6 • All data center equipment for a data center will be exempt from property taxation for  
7 the term of the approved exemption.  
8
- 9 • Any exemption granted under this section will remain in effect for up to 10 years with  
10 respect to any particular facility, or up to 20 years for a data center, regardless of  
11 any change in the authority of the county or municipality to grant these exemptions  
12 or the expiration of the Enterprise Zone Act under Ch. 290, F.S.  
13
- 14 • This law's amendments to ss. 196.012 and 196.1995, F.S., which relate to the  
15 property tax exemption for certain enterprise zone businesses, are remedial in  
16 nature and apply retroactively to December 31, 2015.  
17

18 See Chapter 2016-220, Sections 2, 3, and 4, Laws of Florida (HB 7099).  
19

20 Space laboratories and carriers. See section 196.1999, F.S.  
21

22 Biblical history display. See section 196.1987, F.S.  
23

24 **Note:** Hospitals. Legislation enacted in 2021 repealed section 193.019, F.S., relating to  
25 the exemption for hospitals and community benefit reporting. See Chapter 2021-31,  
26 Section 1, Laws of Florida, (HB 7061), effective May 21, 2021. Legislation enacted in 2020  
27 had created section 193.019, F.S., effective January 1, 2022, relating to the exemption  
28 for hospitals, and providing for community benefit reporting. See Chapter 2020-10, Section  
29 2, Laws of Florida (CS/HB 7097) effective January 1, 2022.  
30

31 Hospitals, nursing homes, and homes for special services. See section 196.197, F.S.  
32

33 **Note:** Legislation enacted in 2017 amended section 196.012(9), F.S., to include in the  
34 terms "nursing home" or "home for special services," institutions that possess a valid  
35 license under Chapter 429, Part I, F.S., and to make this amendment applicable to the  
36 2017 property tax roll. This change was effective May 25, 2017 and applies to  
37 assessments and administrative reviews beginning in 2017. See Chapter 2017-36, Sections  
38 3 and 4, Laws of Florida (HB 7109).  
39

40 Nonprofit homes for the aged. See section 196.1975, F.S.  
41

42 **Note:** Legislation enacted in 2017 amended section 196.1975(4)(c), F.S., to provide  
43 that a not-for-profit corporation applying for an exemption for units or apartments under  
44 paragraph (4)(a) of the statute must file, with the application, an affidavit from each  
45 person who occupies a unit stating the person's income; the corporation is not required  
46 to provide an affidavit from a resident who is a totally and permanently disabled veteran

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1 who meets the requirements of s. 196.081, F.S. The amendment also provides that, if  
2 the property appraiser determines that additional documentation proving an affiant's  
3 income is necessary, the property appraiser may request it. This change was effective  
4 July 1, 2017, and applies to assessments and administrative reviews beginning in 2018.  
5 See Chapter 2017-36, Sections 5 and 59, Laws of Florida (HB 7109).

6  
7 Proprietary continuing care facilities. See section 196.1977, F.S.

8  
9 Licensed child care facilities located in an enterprise zone. See section 196.095, F.S.

### 10 11 12 **PART 3: Administrative Reviews of Denials of Property Classifications**

13  
14 The Florida Constitution provides for certain "classifications" of property for assessment  
15 purposes.

16  
17 "Property Classification" or "Classification" means a classification of property for  
18 assessment purposes according to applicable statutory criteria, including those in  
19 Chapter 193, Part II, F.S., and an assessment of the property at its classified use value.

20  
21 "Classified use value" means the value of a property that is based solely on the  
22 property's character or use and based on the applicable statutory criteria, without regard  
23 to the property's highest and best use. See section 192.001(2), F.S.

24  
25 The sections below contain information on the administrative review of denials of  
26 classifications, including information on the statutory criteria for classifications.

### 27 28 29 **The Administrative Review Process for Denials of Classifications**

30 Set forth below is a sequence of general procedural steps for Boards and special  
31 magistrates to follow in administrative reviews of denials of classifications in order to  
32 fulfill the procedural requirements of section 194.301, F.S., and Rule 12D-9.027(4),  
33 F.A.C.

34  
35 This sequence of steps applies to: the consideration of evidence, the development of  
36 conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

37  
38 *"The board or special magistrate shall not be required to make, at any time during a*  
39 *hearing, any oral or written finding, conclusion, decision, or reason for decision."* See  
40 Rule 12D-9.025(9), F.A.C.

41  
42 *"The board or special magistrate has the discretion to determine whether to make such*  
43 *determinations during a hearing or to consider the petition and evidence further after the*  
44 *hearing and then make such determinations."* See Rule 12D-9.025(9), F.A.C.

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1 Under Rule 12D-9.027(4), F.A.C., in administrative reviews of denials of classifications,  
2 the Board or special magistrate shall follow this sequence of general procedural steps:

- 3
- 4 1. Consider the admitted evidence presented by the parties;
- 5
- 6 2. Identify the particular property classification issue that is the subject of the petition;
- 7
- 8 3. Identify the statutory criteria that apply to the property classification that was  
9 identified as the issue under administrative review;
- 10
- 11 4. Identify and consider the essential characteristics of the petitioned property or the  
12 property owner, as applicable, based on the statutory criteria that apply to the issue  
13 under administrative review;
- 14
- 15 5. Identify and consider the basis used by the property appraiser in issuing the denial  
16 of property classification for the petitioned property; and
- 17
- 18 6. Determine whether the admitted evidence proves by a preponderance of the  
19 evidence that the property appraiser's denial is incorrect and the property  
20 classification should be granted because all of the applicable statutory criteria are  
21 satisfied.
- 22

23 The Board or special magistrate must decide whether the admitted evidence, regardless  
24 of which party presented the evidence, has sufficient weight (in relevance and  
25 credibility) to legally justify overturning the property appraiser's original determination  
26 and granting the property classification.

27

28 If the admitted evidence proves the petitioner's case by the greater weight of the  
29 evidence, the original determination must be overturned and the petition granted.

30

31 If the admitted evidence does not legally justify overturning the property appraiser's  
32 original determination, the determination must be upheld.

### 33

### 34

### 35 **Statutory Criteria for Property Classifications**

36 The following sections of this module contain information on the statutory criteria that  
37 must be met to qualify for the property classifications available in Florida.

38

39 \* In the case of the more common classifications, this training presents more detail on  
40 the applicable statutory criteria.

41

42 \* Information on less common classifications not specifically addressed in this training  
43 can be found in Chapter 193, Part 2, F.S.

44  
45

1 **Statutory Criteria for Different Types of Property Classifications**

2 Statutory criteria for the following types of property classifications are presented below.

3  
4  
5 Types of Property Classifications

- 6 • Agricultural Property
- 7 • Pollution Control Devices
- 8 • Noncommercial Recreational and Conservation Lands
- 9 • Historic Property
- 10 • High-water Recharge Property
- 11 • Working Waterfront Property
- 12 • Renewable Energy Source Device

13  
14  
15 **Agricultural Property**

16 Authorized in Article VII, Section 4(a), of the Florida Constitution.

17  
18 The agricultural classification is governed by sections 193.451, 193.461, 193.4615, and  
19 193.462, F.S.

20  
21 The property owner must apply for classification as agricultural property by March 1.  
22 However, section 193.462, Florida Statutes, allows the Board to grant the classification  
23 even when an application was not made by the statutory deadline.

24  
25 Qualifying property must be used for “bona fide agricultural purposes,” meaning good  
26 faith commercial usage. In determining bona fide agricultural use, the property appraiser  
27 may consider the following factors: See section 193.461(3)(b)1., F.S.

- 28 a. The length of time the land has been utilized for bona fide agricultural purposes;
- 29 b. Whether the use has been continuous;
- 30 c. The purchase price paid;
- 31 d. Size, as it relates to specific agricultural use, but a minimum acreage may not be
- 32 required for agricultural assessment;
- 33 e. Whether an indicated effort has been made to care sufficiently and adequately for
- 34 the land in accordance with accepted commercial agricultural practices, including,
- 35 without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted
- 36 agricultural practices;
- 37 f. Whether the land is under lease and, if so, the effective length, terms, and conditions
- 38 of the lease; and
- 39 g. Such other factors as may become applicable.
- 40
- 41
- 42
- 43
- 44
- 45
- 46

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1  
2 “Agricultural Purposes” include but are not limited to: See section 193.461(5), F.S.

- 3  
4 \* Horticulture  
5 \* Floriculture  
6 \* Viticulture  
7 \* Forestry  
8 \* Dairy  
9 \* Livestock  
10 \* Poultry  
11 \* Bees  
12 \* Pisciculture (when the land is used primarily for the production of tropical fish)  
13 \* Aquaculture  
14 \* Sod Farming  
15 \* All forms of farm products as defined in section 823.14(3), F.S., and farm  
16 production  
17

18 Under section 193.461(3)(e), F.S., land that has received an agricultural classification  
19 from the value adjustment board or a court of competent jurisdiction is entitled to  
20 receive such classification in any subsequent year until: such agricultural use of the land  
21 is abandoned or discontinued; the land is diverted to a nonagricultural use; or the land is  
22 reclassified as nonagricultural pursuant to section 193.461(4), F.S.  
23

24 \* In Tilton v. Gardner, 52 So.3d 771 (Fla. 5th DCA 2010), the court, in reviewing a  
25 denial of an agricultural classification that had been granted by the value adjustment  
26 board in a prior assessment year under subsection 193.461(3)(e), F.S., applied the  
27 physical activity test in determining whether record evidence was sufficient to justify  
28 continuing the agricultural classification.  
29

- 30 \* The Florida Supreme Court has held that the key to determining whether an  
31 agricultural classification should be granted is the actual physical activity on the  
32 land. See Schultz v. Love PGI Partners, LP, 731 So.2d 1270, 1271 (Fla. 1999).  
33 Also, see Straughn v. Tuck, 354 So.2d 368, 370 (Fla. 1977).  
34  
35

### **Agricultural Property: Dispersed Water Storage Programs**

37 \* Legislation enacted in 2014 amended Section 193.461, F.S., to provide that  
38 agricultural lands that participate in a dispersed water storage program under a  
39 contract with the Department of Environmental Protection or a water management  
40 district, which requires flooding of land, will retain the agricultural classification as  
41 long as the lands are included in the program or successor programs.  
42

43 \* The property appraiser will assess these lands as nonproductive agricultural lands.  
44

45 \* Lands that participate and are diverted from an agricultural use to a nonagricultural  
46 use shall be assessed under Section 193.011, F.S.

1  
2  
3 **Agricultural Property: Quarantine and Eradication Programs**

4 Agricultural land taken out of production due to a state or federal quarantine or  
5 eradication program shall continue to be classified as agricultural property for the  
6 duration of such program or successor program. See Section 193.461(7), F.S.

7  
8 \* If the land in the program lies fallow or is used for non-income producing purposes,  
9 the land shall have a de minimus value of no more than \$50 per acre.

10  
11 \* If the land in the program is used for another permissible agricultural use, the land  
12 shall be assessed based on that usage.

13  
14 \* If the land is converted to a nonagricultural use, it will be assessed as  
15 nonagricultural property under section 193.011, F.S.

16  
17 **Note:** Legislation enacted in 2016 amended section 193.461(7)(a), F.S., to provide that  
18 lands classified for assessment purposes as agricultural lands that a state or federal  
19 eradication or quarantine program takes out of production will remain agricultural lands  
20 for the remainder of the program. Lands that these programs convert to nonincome-  
21 producing uses will continue to be assessed at a minimum value of up to \$50 per acre  
22 on a single-year assessment methodology.

23  
24 This legislation identified the Citrus Health Response Program as a state or federal  
25 eradication or quarantine program, and allows land to retain its agricultural classification  
26 for five years after the date of execution of a compliance agreement between the  
27 landowner and the Department of Agriculture and Consumer Services (DACCS) or a  
28 federal agency, as applicable, for this program or successor programs.

29  
30 Lands under these programs that are converted to fallow or otherwise nonincome-  
31 producing uses are still agricultural lands assessed at a minimal value of up to \$50 per  
32 acre on a single-year assessment methodology while fallow or used for nonincome-  
33 producing purposes. Lands under these programs that are replanted in citrus according  
34 to the requirements of the compliance agreement are classified as agricultural lands  
35 and are assessed at a minimal value of up to \$50 per acre, on a single-year  
36 assessment methodology, during the five-year term of agreement.

37  
38 See Chapter 2016-88, Sections 1 and 5, Laws of Florida (CS/CS/HB 749).

39  
40 **Note:** Legislation enacted in 2018 created section 193.461(7)(c), F.S., to require  
41 agricultural lands that incur damage from a natural disaster, for which the Governor  
42 declares a state of emergency and results in halting agricultural production, to be  
43 classified as agricultural lands for five years following termination of the emergency  
44 declaration. However, if the lands are diverted from agricultural use to nonagricultural  
45 use during or after the five-year recovery period, the property appraiser must assess the  
46 lands at just value under s. 193.011, F.S. This provision applies retroactively to natural

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1 disasters that occurred on or after July 1, 2017. See Chapter 2018-84, Section 1, Laws of  
2 Florida (CS/CS/SB 740).

3  
4 **Note:** Legislation enacted in 2018 created section 193.461(8), F.S., to provide that  
5 lands classified as agricultural, which are not being used for agricultural production due  
6 to a hurricane that made landfall in this state during 2017, must continue to be classified  
7 as agricultural through December 31, 2022, unless the lands are converted to a  
8 nonagricultural use. Lands converted to nonagricultural use are not covered by this  
9 subsection and must be assessed as otherwise provided by law. This amendment  
10 applies to the 2018 tax roll. See Chapter 2018-118, Sections 12 and 13, Laws of Florida  
11 (CS/HB 7087).

### 12 13 14 **Agricultural Property: Special Types**

15 See Sections 193.451 and 193.4615, F.S.

16 In addition to the classified use assessments of agricultural land discussed previously,  
17 there are additional provisions which address specific kinds of agricultural property.

18  
19 These provisions usually deal with the assessment of tangible personal property and  
20 instruct that said property should either have no value placed upon it or that it should be  
21 valued as salvage.

22  
23 Items with no value:

- 24 \* Growing annual crops
- 25 \* Nonbearing fruit trees
- 26 \* Raw agricultural products (until offered for sale)

27  
28 Items valued as salvage:

- 29 \* Citrus grading and classification equipment leased from the Department of  
30 Agriculture
- 31 \* Obsolete agricultural equipment

### 32 33 34 **Agritourism**

35 **Note:** Legislation enacted in 2022 amended section 570.85, F.S., relating to  
36 agritourism, to remove a requirement that agritourism be a "secondary" stream of  
37 revenue for a bona fide agricultural operation. The requirement of primary use for  
38 agriculture in section 193.461(3)(b), F.S., is retained after amending the agritourism  
39 statute. Amended section 570.87, F.S. to provide an agricultural classification  
40 pursuant to section 193.461, F.S. may not be denied or revoked solely due to the  
41 conduct of agritourism activity on a bona fide farm or the construction, alteration, or  
42 maintenance of a nonresidential farm building, structure, or facility on a bona fide  
43 farm which is used to conduct agritourism activities. So long as the building,  
44 structure, or facility is an integral part of the agricultural operation, the land it  
45 occupies shall be considered agricultural in nature. However, such buildings,  
46 structures, and facilities, and other improvements on the land, must be assessed

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1 under section 193.011, F.S. at their just value and added to the agriculturally  
2 assessed value of the land. See Chapter 2022-77, Laws of Florida, (SB 1186), effective  
3 July 1, 2022.  
4  
5

### 6 **Pollution Control Devices**

7 This classification is governed by Section 193.621, F.S., which:

- 8
- 9 \* States that pollution control devices installed in manufacturing or industrial plants or  
10 installations shall be valued as salvage.  
11
- 12 \* Provides that demolition and reconstruction of part of such a facility for the purpose  
13 of reducing pollution, and which does not substantially increase the productivity of  
14 the facility, shall not increase the facility's assessed value.  
15
- 16 \* Allows the property appraiser to seek a recommendation from the Department of  
17 Environmental Protection as to what constitutes pollution control.  
18
- 19 \* Allows the Department of Environmental Protection to promulgate rules concerning  
20 this exemption.  
21  
22

### 23 **Noncommercial Recreation and Conservation Lands**

24 This classification is governed by Section 193.501, F.S.

25  
26 To receive this classification, property must be subject to a conservation easement,  
27 qualified as environmentally endangered land, designated as conservation land, or used  
28 for outdoor recreational or park purposes.  
29

30 In addition, the owner must convey all rights to develop the property to a public entity or  
31 enter into a covenant with a public entity, for a period no less than ten years, providing  
32 that the property shall be subject to one or more of the conservation restrictions  
33 provided in Section 704.06(1), F.S. and shall not be used by the owner except for  
34 outdoor recreational purposes.  
35

36 If the covenant or conveyance extends for more than ten years, the property shall be  
37 valued considering no factors other than those relative to its value for the present use  
38 as restricted by the covenant or conveyance.  
39

40 If the covenant has less than ten years left, the property will be valued at just value  
41 considering the restrictions imposed by the covenant.  
42

43 If the owner seeks to end the covenant before its expiration, he or she will be liable for  
44 all deferred tax liability plus interest.  
45  
46

1 **Historic Property**

2 There are two separate sections of the Florida Statutes which enact two separate  
3 programs for historic properties.

4  
5 \* Section 193.503, F.S., applies to historic properties used for commercial or certain  
6 nonprofit purposes.

7  
8 \* Section 193.505, F.S., deals with other historically significant property.

9

10

11 **Historic Property: Section 193.503, F.S.**

12 The criteria for qualifying for this classification are as follows:

13

14 \* Classification under this section must be authorized by the city or county, in which  
15 case it applies to that entity's tax levy;

16

17 \* An application for classification must be filed by March 1;

18

19 \* The property must be used for commercial purposes or by a not-for-profit  
20 organization under Section 501(c)(3) or (6) of the Internal Revenue Code;

21

22 \* The property must be: listed in the National Register of Historic Places, part of a  
23 National Register Historic District, or designated as historic or part of a historic  
24 district under a local preservation ordinance;

25

26 \* The property must be maintained in good condition to preserve historic value; and

27

28 \* The property must be open to the public 40 hours per week for 45 weeks per year or  
29 for 1800 hours annually.

30

31 The classification is lost if the owner fails to continue to meet these criteria.

32

33

34 **Historic Property: Section 193.505, F.S.**

35 The criteria for qualifying for this classification are as follows:

36

37 \* The property must be: on the National Register of Historic places, in a certified  
38 locally designated historic district, or found to be historic by the Division of Historical  
39 Resources or a local historic preservation board;

40

41 \* The owner must convey all rights to develop the property to the county governing  
42 board or enter into a covenant for a period of no less than ten years providing that  
43 the property shall not be used for any purpose inconsistent with historic preservation  
44 or the historic qualities of the property;

45

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- 1 \* The county must agree to accept the development right or covenant and must  
2 designate the property as historic by formal resolution;  
3
- 4 \* The county may not transfer development rights or use them in a manner  
5 inconsistent with historic preservation or the historic qualities of the property;  
6
- 7 \* If the owner seeks to end the covenant before its expiration, he or she will be liable  
8 for all deferred tax liability plus interest; and  
9
- 10 \* When the covenant ends, the owner is responsible for all deferred tax liability plus  
11 interest.  
12  
13

### 14 **High-water Recharge Property**

15 The county or city must adopt an ordinance allowing for this classification. See Section  
16 193.625, F.S.  
17

- 18 \* The ordinance shall provide the formula for assessing property which qualifies for  
19 this classification.  
20
- 21 \* Land must be used for “bona fide high-water recharge purposes.”  
22
- 23 \* Application for this classification must be made by March 1.  
24
- 25 \* The land owner must contract to use the land for high-water recharge purposes for  
26 five years or more.  
27

28 To qualify as being used for “bona fide high-water recharge purposes”: See Subsection  
29 193.625(3)(b), F.S.  
30

- 31 \* The land use must have been continuous.  
32
- 33 \* The land use must be vacant residential, vacant commercial, vacant industrial,  
34 vacant institutional, nonagricultural, or single-family residential.  
35
- 36 \* The maintenance of one single-family residential dwelling on part of the land does  
37 not in itself preclude a high-water recharge classification.  
38
- 39 \* The land must be located within a prime groundwater recharge area or in an area  
40 considered by the appropriate water management district to supply significant  
41 groundwater recharge.  
42
- 43 \* Significant groundwater recharge shall be assessed by the appropriate water  
44 management district on the basis of hydrologic characteristics of the soils and  
45 underlying geologic formations.  
46

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- 1 \* The land must not be receiving any other special classification.
- 2
- 3 \* There must not be in the vicinity of the land any activity that has the potential to
- 4 contaminate the ground water, including, but not limited to, the presence of:
- 5
- 6 \* Toxic or hazardous substances;
- 7 \* Free-flowing saline artesian wells;
- 8 \* Drainage wells;
- 9 \* Underground storage tanks; or
- 10 \* Any potential pollution source existing on a property that drains to the
- 11 property seeking the high-water recharge classification.
- 12
- 13 \* The parcel of land must be at least ten acres.
- 14
- 15

### 16 **Working Waterfront Property**

17 The Florida Constitution sets forth criteria for classifying and valuing working waterfront  
18 property.

19  
20 The provisions of Amendment 6, working waterfronts, have been placed in the Florida  
21 Constitution at Article VII, Section (4)(j), effective for the 2010 assessment year.

22  
23 These provisions state as follows:

24  
25 *“(j)(1) The assessment of the following working waterfront properties shall*  
26 *be based upon the current use of the property:*

- 27
- 28 *a. Land used predominantly for commercial fishing purposes.*
- 29
- 30 *b. Land that is accessible to the public and used for vessel launches*  
31 *into waters that are navigable.*
- 32
- 33 *c. Marinas and drystacks that are open to the public.*
- 34
- 35 *d. Water-dependent marine manufacturing facilities, commercial*  
36 *fishing facilities, and marine vessel construction and repair*  
37 *facilities and their support activities.*
- 38

39 *(2) The assessment benefit provided by this subsection is subject to*  
40 *conditions and limitations and reasonable definitions as specified by*  
41 *the legislature by general law.”*

42  
43 The constitutional amendment on working waterfronts is self-executing with  
44 authorization for the Legislature to elaborate by general law.

45

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1 In the 2009 and 2010 sessions, the Legislature considered bills that did not pass but  
2 that would have contained guidance for classifying and valuing working waterfront  
3 property. These bills would have applied to the 2010 tax year if they had become law.  
4

5 Amendment 6, creating classification of property used for working waterfronts, is  
6 effective for the 2010 year in the absence of legislation.  
7  
8

### 9 **Renewable Energy Source Device Classification**

10 \* Legislation enacted in 2013 created section 193.624, F.S., to provide for  
11 assessment of a "renewable energy source device" installed on or after January 1,  
12 2013, to new and existing residential real property.  
13

14 \* When determining the assessed value of real property used for residential purposes,  
15 an increase in the just value of the property attributable to the installation of a  
16 renewable energy source device may not be considered.  
17

18 \* This requirement is an exception to certain provisions relating to assessment of  
19 changes, additions, or improvements in sections 193.155 and 193.1554, F.S.  
20

21 \* This legislation became effective July 1, 2013 and applies to assessments and  
22 administrative reviews beginning in 2014. See Chapter 2013-77, Sections 1, 2, and 3,  
23 Laws of Florida (HB 277).  
24

25 **Note:** Legislation enacted in 2017 amended section 193.624, F.S., to provide, for  
26 nonresidential real property, that 80 percent of the just value attributable to a renewable  
27 energy source device may not be considered in determining the assessed value of the  
28 property; this provision applies to devices installed on nonresidential property on or after  
29 January 1, 2018, except in a fiscally constrained county for which application for  
30 comprehensive plan amendment or planned unit development zoning is made by  
31 December 31, 2017. This change became effective July 1, 2017, and applies to  
32 assessments and administrative reviews beginning in 2018. See Chapter 2017-118,  
33 Sections 2 and 8, Laws of Florida (CS/SB 90).  
34  
35

### 36 **PART 4: Administrative Reviews of Determinations of Changes of** 37 **Ownership or Control or Qualifying Improvement**

#### 38 **Assessment Increase Limitation for Homestead Real Property**

39  
40 Homestead real property shall be assessed at just value on the January 1 following a  
41 change of ownership. See Section 193.155, F.S.  
42  
43

44 Under Section 193.155(3)(a), F.S., a change of ownership means any sale, foreclosure,  
45 or transfer of legal title or beneficial title in equity to any person, except:  
46

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1 1. If after transfer, the same person is entitled to the homestead exemption as was  
2 previously entitled and the transfer:

3  
4 a. Is to correct an error; or

5  
6 b. Is between legal and equitable title; or

7  
8 c. Is by an instrument in which the owner is both grantor and grantee of the real  
9 property and one or more other individuals are additionally named as grantee.  
10 However, a change of ownership occurs if such individual applies for a  
11 homestead exemption on the property; or

12  
13 **Note:** Legislation enacted in 2021 added subparagraph d:

14 d. Is by means of an instrument in which the owner entitled to the homestead  
15 exemption is listed as both grantor and grantee of the real property and one or  
16 more other individuals, all of whom held title as joint tenants with rights of  
17 survivorship with the owner, are named only as grantors and are removed from  
18 the title; or

19 See Chapter 2021-31, Section 2, Laws of Florida, (HB 7061), effective July 1, 2021.

20  
21 **Note:** Legislation enacted in 2013 added what is now subparagraph e:

22 e. if the transfer is to a person who is entitled to the homestead exemption both  
23 before and after the transfer and the person is a lessee entitled to the  
24 homestead exemption under section 196.041(1), F.S.

25 See Chapter 2013-72, Section 4, Laws of Florida (SB 1830).

26  
27 2. If the transfer is between husband and wife including a change or transfer to a  
28 surviving spouse or a transfer due to a dissolution of marriage; or

29  
30 3. If the transfer occurs by operation of law under Section 732.401, F.S.; or

31  
32 4. If on the death of the owner, the transfer is between the owner and another who  
33 is a permanent resident and is legally or naturally dependent upon the owner; or

34  
35 **Note:** Legislation enacted in 2021 added subparagraph 5.:

36 5. The transfer occurs with respect to a property where all of the following apply:

37 a. Multiple owners hold title as joint tenants with rights of survivorship;

38 b. One or more owners were entitled to and received the homestead exemption  
39 on the property;

40 c. The death of one or more owners occurs; and

41 d. Subsequent to the transfer, the surviving owner or owners previously entitled to  
42 and receiving the homestead exemption continue to be entitled to and receive  
43 the homestead exemption.

44 See Chapter 2021-31, Section 2, Laws of Florida, (HB 7061), effective July 1, 2021.

45  
46

1 **Assessment Increase Limitation for Non-Homestead Real Property**

2 The types of property eligible for the 10 percent cap are provided under Section  
3 193.1554, F.S., and Section 193.1555, F.S.

4  
5 Section 193.1554, F.S., relates to the assessment of non-homesteaded residential  
6 property that contains nine or fewer dwelling units that does not receive a homestead  
7 exemption under Section 196.031, F.S., including vacant property zoned and platted for  
8 residential use.

9  
10 Section 193.1555, F.S., relates to residential property with 10 or more units and to non-  
11 residential real property.

12  
13 “Non-residential real property” means real property that is not subject to the assessment  
14 limitations set forth in subsection 4(a), (b), (c), (d), or (g), Article VII of the Florida  
15 Constitution. This involves property classified agricultural, high-water recharge, non-  
16 commercial recreational, conservation, and homestead limited increase property.

17  
18 When ownership or control of the property changes, the property is subject to  
19 reassessment at just value.

20  
21 Also, when a qualifying improvement is made on a non-homestead property that has 10  
22 or more dwelling units, or is non-residential property, under Section 193.1555(5), F.S.,  
23 the property is required to be assessed at just value as of January 1 of the year following  
24 the qualifying improvement.

25  
26 A qualifying improvement means any substantially completed improvement that increases  
27 the just value of the property by at least 25 percent. See section 193.1555(5)(a), F.S.

28  
29 “Improvement” means an addition or change to land or buildings which increases their value  
30 and is more than a repair or a replacement. See section 193.1555(1)(b), F.S.

31  
32 A person or entity that owns non-homestead property subject to receiving the 10  
33 percent assessment increase limitation under Sections 193.1554 or 193.1555, F.S.,  
34 must notify the property appraiser of the county where the property is located of any  
35 change of ownership or control as defined in Sections 193.1554(5) and 193.1555(5),  
36 F.S. See section 193.1556, F.S.

37  
38 Rule 12D-8.00659, F.A.C., (Notice of Change of Ownership or Control of Non-  
39 Homestead Property) contains detailed provisions explaining the change in ownership  
40 and control. Forms are included for the owner to notify the property appraiser as  
41 provided in sections 193.1554 and 193.1555, F.S.

42  
43  
44

1 **Module 10:**  
2 **Administrative Reviews of**  
3 **Assessment Difference Transfers and Tax Deferrals**  
4

5 Training Module 10 addresses the following topics:  
6

7 **PART 1**

8 **Administrative Reviews of Assessment Difference Transfers**

- 9 • Overview of Assessment Difference Transfers (Portability)  
10 • Petitions on Determinations Made in the New Homestead County  
11 • Petitions on Determinations Made in the Previous Homestead County  
12 • Procedures for a Hearing in the Previous Homestead County  
13 • Procedures for a Cross-county Hearing in the New Homestead County  
14 • Statutory Criteria for Assessment Difference Transfers  
15 • The Administrative Review Process for Assessment Difference Transfers  
16

17 **PART 2**

18 **Administrative Reviews of Tax Deferrals and Penalties**

- 19 • Overview of Tax Deferrals  
20 • Overview of Penalties on Tax Deferrals  
21 • Unique Aspects of Petitions on Tax Deferrals and Penalties  
22 • The Administrative Review Process for Tax Deferrals and Penalties  
23  
24

25 **Learning Objectives**

26 After completing this training module, the learner should be able to:  
27

- 28 • Recognize and apply the definition of “assessment difference”  
29 • Recognize and apply the definition of “portability” and “assessment difference  
30 transfer”  
31 • Identify the two general locations where portability may apply  
32 • Recognize where a portability petition must be filed  
33 • Identify and apply the requirements for petitions on determinations made in the new  
34 homestead county  
35 • Identify and apply the requirements for petitions on determinations made in the  
36 previous homestead county  
37 • Recognize and apply the procedures for a hearing in the previous homestead county  
38 • Identify and apply the procedures for a cross-county hearing in the new homestead  
39 county  
40 • Identify and apply the statutory criteria for assessment difference transfers  
41 • Apply the administrative review process for assessment difference transfers  
42 • Recognize how tax deferrals differ from exemptions  
43 • Identify the property types for which tax deferrals could apply  
44 • Identify when penalties on tax deferrals apply

- 1 • Recognize the unique aspects of petitions on tax deferrals and penalties
- 2 • Apply the administrative review process for tax deferrals and penalties

3  
4  
5 **PART 1**  
6

7 **Overview of Assessment Difference Transfers (Portability)**

8 Under a constitutional amendment passed in January 2008, along with 2008 legislation,  
9 a taxpayer may qualify to transfer the difference between the just value and assessed  
10 value of his or her previous homestead property to a new homestead property.

11  
12 “Assessment difference” means the difference between just value and assessed value  
13 that can be transferred from a previous homestead property to a new homestead  
14 property.

15  
16 “Portability” and “assessment difference transfer” mean the assessment, at less than  
17 just value, of a new homestead property based on the transfer of an assessment  
18 difference from a previous homestead property after the previous homestead has been  
19 abandoned.

20  
21 Subsection 193.155(8), F.S., sets time limits for qualifying for an assessment difference  
22 transfer and sets limitations on the amount of the assessment difference that can be  
23 transferred.

24  
25 To qualify for transfer of an assessment difference, a homestead property owner must  
26 timely file a portability application with the property appraiser on a separate form.

27  
28 \* This portability application should be filed along with the homestead exemption  
29 application for the new residence.

30  
31 Portability may apply to a new homestead property located in the same county as the  
32 previous homestead property or may apply to a new homestead property located in a  
33 county other than the previous homestead county.

34  
35 When a property owner applies for portability in a county other than the previous  
36 homestead county, the property appraiser in the previous homestead county is required  
37 to provide the amount of the assessment difference for the previous homestead to the  
38 property appraiser in the new homestead county.

39  
40 \* Therefore, in cases where two counties are involved, the property appraiser in each  
41 county must take actions that determine whether portability is granted and determine  
42 the amount of the transfer.

43  
44 Some of the criteria for qualifying for portability and calculating allowable amounts for  
45 transfer are complex, especially when applied to multiple owners who separate, join

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1 together, or transfer from one county to another.

2  
3 The shares of the assessment difference cannot be sold, transferred, or pledged to any  
4 taxpayer, except by sworn irrevocable designation of ownership shares between  
5 husband and wife as described in Chapter 2012-193, Section 5, Laws of Florida.

6  
7 \* In the case of a husband and wife abandoning jointly titled property, the husband  
8 and wife may designate the ownership share to be attributed to each spouse by  
9 following the procedure in paragraph (f) of subsection 193.155(8), F.S. To qualify to  
10 make such a designation, the husband and wife must be married on or before the  
11 date they abandon the jointly owned property. See Chapter 2012-193, Section 5, Laws  
12 of Florida, amending subsection 193.155(8)(d), F.S.

13  
14 \* A husband and wife abandoning jointly titled property and who wish to designate the  
15 ownership share of the previous homestead to be attributed to each person for  
16 purposes of subsection 193.155(8)(d), F.S., must file a form with the property  
17 appraiser in the previous homestead county. The filed form must include a sworn  
18 statement by each person designating the ownership share of the abandoned  
19 homestead to be attributed to each person for purposes of portability. Such a  
20 designation of ownership shares, once filed with the previous property appraiser, is  
21 irrevocable and cannot be changed. See Chapter 2012-193, Section 5, Laws of Florida,  
22 creating subsection 193.155(8)(f), F.S.

23  
24 More information on the applicable criteria is presented later in this module in a section  
25 titled "Statutory Criteria for Assessment Difference Transfers."

26  
27 Rule 12D-9.028, F.A.C., applies to the review of denials of assessment limitation  
28 difference transfers and to the amount of an assessment limitation difference transfer.

29  
30 No adjustment to the just, assessed, or taxable value of the previous homestead parcel  
31 may be made pursuant to a petition under Rule 12D-9.028, F.A.C.

### 32 33 34 **Petitions on Determinations Made in the New Homestead County**

35 A portability petition must always be filed in the county where the new homestead  
36 property is located.

37  
38 However, in cases where two counties are involved, the law allows the petitioner to  
39 appeal the actions of the property appraiser in the new homestead county and the  
40 actions of the property appraiser in the previous homestead county.

41  
42 If only a part of a transfer of assessment difference is granted by a property appraiser,  
43 the notice of proposed property taxes (TRIM notice) functions as notice of the  
44 taxpayer's right to appeal to the Board. See Rule 12D-9.028(2), F.A.C.

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1 The Department has provided Form DR-490PORT for property appraisers to use in  
2 notifying taxpayers of denials of portability.

3  
4 To appeal either a denial of a transfer or the amount of a transfer, a taxpayer may file a  
5 petition with the Board in the new homestead county using Form DR-486PORT. See  
6 Rule 12D-9.028(2) and (3), F.A.C.

7  
8 Form DR-486PORT is available on the Department's website at the following link:  
9 <http://floridarevenue.com/property/Pages/VAB.aspx>

10  
11 This petition may be filed at any time during the taxable year by the 25th day following  
12 the mailing of the notice of proposed property taxes as provided in Section 194.011,  
13 F.S. See Rule 12D-9.028(2), F.A.C.

14  
15 In hearings held in the new homestead county, the Board or special magistrate shall  
16 review the application and accompanying evidence presented to the property appraiser  
17 by the petitioner and shall hear the petition for portability. See Rule 12D-9.028(3), F.A.C.

18  
19 Portability petitions shall be heard by an attorney special magistrate if the Board uses  
20 special magistrates. See Rule 12D-9.028(3), F.A.C.

21  
22 NOTE: When the petitioner indicates on the completed petition that he or she is  
23 appealing the actions of the property appraiser in the previous homestead county, it is  
24 necessary for two hearings to be held.

25  
26 \* The first of these two hearings must be held in the county where the previous  
27 homestead property is located, and the second hearing must be held in the county  
28 where the new homestead property is located.

### **Petitions on Determinations Made in the Previous Homestead County**

30  
31 Under Rule 12D-9.028(5), F.A.C., the petitioner may file a petition in the new  
32 homestead county when the petitioner does not agree with either:

- 33  
34  
35 1. The denial by the property appraiser in the previous homestead county of an  
36 assessment limitation difference; or  
37  
38 2. The amount of the assessment limitation difference as determined by the property  
39 appraiser in the previous homestead county.

40  
41 A taxpayer who wants to appeal the action of the property appraiser in the previous  
42 homestead county must so indicate by checking the appropriate box on the portability  
43 petition (Form DR-486PORT) filed with the Board clerk in the new homestead county.  
44 See Rule 12D-9.028(4), F.A.C.

45

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1 Upon receiving the completed petition from the taxpayer, the Board clerk in the new  
2 homestead county shall complete Form DR-486XCO and send it, along with the  
3 taxpayer's petition, to the Board clerk in the previous homestead county.  
4

5 When the Board clerk in the previous homestead county receives the completed Form  
6 DR-486XCO and taxpayer's petition, that Board clerk must file these two documents as  
7 a petition to the Board in the previous homestead county. See Rule 12D-9.028(6)(c),  
8 F.A.C.  
9

10 Form DR-486XCO is available on the Department's website at the following link:  
11 <http://floridarevenue.com/property/Pages/VAB.aspx>  
12

13 \* No filing fee is required in the previous homestead county. See Rule 12D-9.028(6)(c),  
14 F.A.C.  
15

16 If a Form DR-486XCO is properly filed, it operates as a timely petition and creates an  
17 appeal to the Board in the previous homestead county on all issues surrounding the  
18 previous assessment difference for the taxpayer involved. See Rule 12D-9.028(5) and  
19 (6)(a), F.A.C.  
20

21 Then, under Rule 12D-9.028(6)(b), F.A.C., the Board clerk in the previous homestead  
22 county shall set the petition for hearing and send a notice of hearing to:  
23

- 24 1. The petitioner(s);
- 25 2. The property appraiser in the previous homestead county; and
- 26 27 3. The property appraiser in the new homestead county.

28  
29 Then, the Board or special magistrate in the previous homestead county shall hear the  
30 petition.  
31

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

1 **Procedures for a Hearing in the Previous Homestead County**

2 If the Board in the previous homestead county uses special magistrates, the petition  
3 shall be heard by an attorney special magistrate. See Rule 12D-9.028(6)(d), F.A.C.

4  
5 The petitioner may attend such hearing and present evidence, but need not do so. See  
6 Rule 12D-9.028(6)(d), F.A.C.

7  
8 If the petitioner does not appear at the hearing, the hearing shall go forward. See Rule  
9 12D-9.028(6)(d), F.A.C.

10  
11 The Board or special magistrate shall obtain the petition file from the Board clerk. See  
12 Rule 12D-9.028(6)(d), F.A.C.

13  
14 The Board or special magistrate shall consider deeds, property appraiser records that  
15 do not violate confidentiality requirements, and other documents that are admissible  
16 evidence. See Rule 12D-9.028(6)(d), F.A.C.

17  
18 The petitioner may submit a written statement for review and consideration by the Board  
19 or special magistrate explaining why the assessment difference transfer should be  
20 granted based on applications and other documents and records submitted by the  
21 petitioner. See Rule 12D-9.028(6)(d), F.A.C.

22  
23 The Board in the previous homestead county shall issue a decision, and the Board clerk  
24 shall send a copy of the decision to the Board clerk in the new homestead county. See  
25 Rule 12D-9.028(6)(e), F.A.C.

26  
27  
28 **Procedures for a Cross-county Hearing in the New Homestead County**

29 When the Board clerk in the new homestead county receives the decision of the Board  
30 in the previous homestead county, the Board clerk must schedule and send notice to  
31 the parties of a hearing before the Board or special magistrate in the new homestead  
32 county.

33  
34 The Board in the new homestead county may not hold its hearing until it has received  
35 the decision from the Board in the previous homestead county. See Rule 12D-9.028(6)(f),  
36 F.A.C.

37  
38 In hearing the petition, the Board or special magistrate in the new homestead county  
39 shall consider the decision of the Board in the previous homestead county on the issues  
40 pertaining to the previous homestead and on the amount of any assessment difference  
41 for which the petitioner qualifies. See Rule 12D-9.028(6)(f), F.A.C.

42  
43 The consideration or adjustment of the just, assessed, or taxable value of the previous  
44 homestead property is not authorized. See Rule 12D-9.028(7), F.A.C.

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**Statutory Criteria for Assessment Difference Transfers**

Statutory criteria for assessment difference transfers are contained in Subsection 193.155(8), F.S.

See also Rule 12D-8.0065, F.A.C., Transfer of Homestead Assessment Difference; “Portability;” Sworn Statement Required; Denials; Late Applications.

The amount of the assessment difference is transferred as a reduction to the just value of the interest owned by persons that qualify for and receive homestead exemption on a new homestead property.

The portability applicant must establish a new homestead on the new residence by January 1 of the year for which the applicant applies for portability.

**Note:** Legislation was enacted in 2018 creating section 193.155(8)(m), F.S., to provide, for purposes of the portability assessment reduction, that an owner of homestead property that was significantly damaged or destroyed as a result of a named tropical storm or hurricane, may elect, in the calendar year following the named tropical storm or hurricane, to have the significantly damaged or destroyed homestead deemed to have been abandoned as of the date of the named tropical storm or hurricane, even though the owner received a homestead exemption on the property as of January 1 of the year immediately following the named tropical storm or hurricane. This election is available only if the owner establishes a new homestead as of January 1 of the second year immediately following the storm or hurricane. This provision applies to homestead property damaged or destroyed on or after January 1, 2017. See Chapter 2018-118, Section 9, Laws of Florida (CS/HB 7087).

If the applicant qualifies for portability, the assessment difference can be transferred, with certain limits, from a previous homestead that was abandoned after January 1 in either of the two preceding years.

Where multiple owners abandon a previous homestead and establish one or more new homesteads, Subsection 193.155(8), F.S., provides criteria for determining the relative shares of the transfer for each of the owners.

When two or more people establish a new homestead, the amount that can be transferred is limited to the highest difference between just value and assessed value from any of the new owners’ previous homesteads.

Additional provisions address how portability works when there are multiple owners. See section 193.155(8), F.S., amended by Chapter 2012-193, Section 5, Laws of Florida. Also, see Rule 12D-8.0065, F.A.C.

Two limitations of an assessment difference transfer are as follows:

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- 1 1. The maximum amount that can be transferred is \$500,000.
- 2
- 3 2. If the new homestead is lower in value than the old homestead, there is a
- 4 percentage limitation on the amount that can be transferred as described in
- 5 section 193.155(8)(b), F.S., and Rule 12D-8.0065, F.A.C.
- 6
- 7

### 8 **The Administrative Review Process for Assessment Difference**

#### 9 **Transfers**

10 The Board or special magistrate is not authorized to adjust the just, assessed, or

11 taxable value of the previous homestead property. See Rule 12D-9.028(1), F.A.C.

12

13 Under Rule 12D-9.027(4), F.A.C., in administrative reviews of assessment difference

14 transfers, the Board or special magistrate shall follow this sequence of general

15 procedural steps:

16

- 17 1. Consider the admitted evidence presented by the parties.
- 18
- 19 2. Identify the particular assessment difference transfer issue that is the subject of the
- 20 petition.
- 21
- 22 3. Identify the statutory criteria that apply to the portability assessment difference
- 23 transfer that was identified as the issue under administrative review.
- 24
- 25 4. Identify and consider the essential characteristics of the petitioned property or the
- 26 property owner, as applicable, based on the statutory criteria that apply to the issue
- 27 under administrative review.
- 28
- 29 5. Identify and consider the basis used by the property appraiser in issuing the denial
- 30 or determining the amount of the assessment difference transfer for the petitioned
- 31 property.
- 32
- 33 6. Determine whether the admitted evidence proves by a preponderance of the
- 34 evidence that the property appraiser's denial or partial denial is incorrect and the
- 35 portability assessment difference transfer should be granted because all of the
- 36 applicable statutory criteria are satisfied.
- 37

38 The Board or special magistrate must decide whether the admitted evidence, regardless

39 of which party presented the evidence, has sufficient weight (in relevance and

40 credibility) to legally justify overturning the property appraiser's original determination

41 and granting the portability assessment difference transfer.

42

43 If the admitted evidence proves the petitioner's case by the greater weight of the

44 evidence, the original determination must be overturned and the petition granted.

45

1 If the admitted evidence does not legally justify overturning the property appraiser's  
2 original determination, the determination must be upheld.

3  
4  
5 **PART 2**  
6

7 **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.

11  
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.

15  
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.

19  
20 Currently, there are three types of property tax deferrals, as listed below with references  
21 to applicable sections of Florida Statutes.

22  
23 The 2011 Legislature rewrote the laws pertaining to tax deferrals.

24  
25 \* The three types of homestead deferrals are now handled together in some statutory  
26 sections and separately in others.

27  
28 \* See Chapter 2011-151 Laws of Florida (SB 478) effective July 1, 2011.

29  
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).

35  
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.

40  
41  
42 **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.

1  
2 This penalty may be appealed to the Board.

3  
4 The burden of proof in these cases is on the petitioner and the standard of proof  
5 remains preponderance of the evidence.

6  
7  
8 **Unique Aspects of Petitions on Tax Deferrals and Penalties**

9 Tax deferrals and associated penalties are administered by the tax collector and not by  
10 the property appraiser.

11  
12 \* Therefore, the tax collector is a party to these types of petitions and the property  
13 appraiser is not.

14  
15 Petitions to the Board on these matters are made on Form DR-486DP and not on Form  
16 DR-486.

17  
18 A petition regarding a tax deferral shall be considered timely if it is filed within 30 days  
19 after the denial is mailed. See section 197.2425, F.S., created by Chapter 2011-151, Section  
20 13, Laws of Florida.

21  
22 A petition appealing penalties imposed for providing incorrect information regarding a  
23 tax deferral is considered timely if filed within 30 days after the penalties are imposed by  
24 the tax collector.

25  
26  
27 **The Administrative Review Process for Tax Deferrals and Penalties**

28 The Department does not have detailed rules for administrative reviews of deferrals and  
29 penalties involving tax collectors.

30  
31 Rather, Rule 12D-9.036, F.A.C., provides procedures for petitions on denials of tax  
32 deferrals, stating the following:

33  
34 *“(1) The references in these rules to the tax collector are for the handling of petitions of*  
35 *denials of tax deferrals under Section 197.2425, F.S., and petitions of penalties*  
36 *imposed under Section 197.301, F.S.”*

37  
38 *“(2) To the extent possible where the context will permit, such petitions shall be handled*  
39 *procedurally under this rule chapter in the same manner as denials of exemptions.”*

40  
41 The procedures for administrative reviews of denials of deferrals and penalties include  
42 those provided for exemptions in Rule 12D-9.027(4)(b) through (g), F.A.C.

43  
44 \* However, the procedures provided in Rule 12D-9.027(4)(a), F.A.C., specifically do  
45 NOT apply to administrative reviews regarding deferrals and penalties.

1  
2  
3 **Module 11:**  
4 **Requirements for Written Decisions**

5 **Training Module 11 addresses the following topics:**

- 6 • Written Decisions and Taxpayer Rights  
7 • General Requirements for Written Decisions  
8 • Required Forms for Written Decisions  
9 • Statements on Board Decisions by the Auditor General  
10 • Statements on Board Decisions by Florida Courts  
11 • Sufficiency of Evidence  
12 • Evaluation of the Relevance of Evidence  
13 • Evaluation of the Credibility of Evidence  
14 • Requirements for Findings of Fact  
15 • Requirements for Conclusions of Law  
16 • Specific Requirements for Findings of Fact and Conclusions of Law  
17 • Reasons for Recommended Decisions and Final Decisions  
18  
19

20 **Learning Objectives**

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

- 22  
23 • Apply taxpayer rights to written decisions  
24 • Identify the conditions under which a written decision is required  
25 • Recognize and properly complete the required forms for written decisions  
26 • Recognize statements from the Auditor General and Florida courts on findings of fact  
27 and conclusions of law  
28 • Evaluate the relevance of evidence  
29 • Evaluate the credibility of evidence  
30 • Identify and apply the requirements for findings of fact  
31 • Identify and apply the requirements for conclusions of law  
32 • Identify and apply the specific requirements for findings of fact and conclusions of  
33 law  
34 • Recognize the requirements for reasons for upholding or overturning the  
35 assessment  
36  
37

38 **Written Decisions and Taxpayer Rights**

39 Florida Statutes provide the following taxpayer right: *“The right to be sent a timely*  
40 *written decision by the value adjustment board containing findings of fact and*  
41 *conclusions of law and reasons for upholding or overturning the determination of the*  
42 *property appraiser.”* See Subsections 192.0105(2)(g) and 194.034(2), F.S.  
43

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

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

3  
4 The taxpayer has the right to be issued a timely written decision by the Board within 20  
5 calendar days of the last day the Board is in session pursuant to Section 194.032, F.S.  
6 See Rule 12D-9.001(2)(k), F.A.C.

7  
8 The Florida Supreme Court has stated that the lawful issuance of findings of fact and  
9 conclusions of law by the Board is a requirement of due process. See Miller v. Nolte, 453  
10 So.2d 397 (Fla. 1984).

### 11 12 13 **General Requirements for Written Decisions**

14 In the value adjustment board process, written decisions include the following:

- 15  
16 1. Remand decisions produced by the Board or special magistrate, as applicable;
- 17  
18 2. Recommended decisions produced by special magistrates; and
- 19  
20 3. Final decisions produced by the value adjustment board.

21  
22 As used in this training, the terms “findings of fact” and “conclusions of law” include  
23 proposed findings of fact and proposed conclusions of law produced by special  
24 magistrates in their recommended decisions. See Rule 12D-9.030(5), F.A.C.

25  
26 When required under Rule 12D-9.029, F.A.C., the Board or special magistrate shall  
27 produce a written remand decision that contains findings of fact, conclusions of law, and  
28 appropriate directions to the property appraiser. See Rules 12D-9.029(4) and (6), F.A.C.

29  
30 For each petition not withdrawn or settled, special magistrates shall produce a written  
31 recommended decision that contains findings of fact, conclusions of law, and reasons  
32 for upholding or overturning the property appraiser’s determination. See Rule 12D-  
33 9.030(1), F.A.C.

34  
35 For each petition not withdrawn or settled, the Board shall produce a written final  
36 decision that contains findings of fact, conclusions of law, and reasons for upholding or  
37 overturning the property appraiser’s determination. See Rule 12D-9.032(1)(a), F.A.C.

38  
39 \* For all withdrawn or settled petitions, a special magistrate shall not produce a  
40 recommended decision and the Board shall not produce a final decision. See Rule  
41 12D-9.021(5), F.A.C.

42  
43 In each recommended decision and in each final decision, the conclusions of law must  
44 be based on findings of fact. For each of the statutory criteria for the issue under  
45 administrative review, the findings of fact must identify the corresponding admitted  
46 evidence or lack thereof. See Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

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1 Each recommended decision and each final decision shall contain sufficient factual and  
2 legal information and reasoning to enable the parties to understand the basis for the  
3 decision, and shall otherwise meet the requirements of law. See Rules 12D-9.030(1) and  
4 12D-9.032(1)(a), F.A.C.

5  
6 The Board shall issue all final decisions within 20 calendar days of the last day the  
7 Board is in session pursuant to Section 194.032, F.S. See Rule 12D-9.032(4), F.A.C.

### 8 9 10 **Required Forms for Written Decisions**

11 For producing recommended decisions and final decisions, the Department prescribes  
12 the Form DR-485 series, and any electronic equivalent forms approved by the  
13 Department under Section 195.022, F.S. See Rule 12D-9.030(4), F.A.C.

- 14  
15 \* The Form DR-485 series is available on the Department's website at the following  
16 link: <http://floridarevenue.com/property/Pages/VAB.aspx>  
17  
18 \* Boards and special magistrates are required to use forms that are current and up-to-  
19 date.  
20  
21 \* The Form DR-485 series, or approved electronic equivalent forms, are the only  
22 forms that shall be used for producing remand decisions, recommended decisions,  
23 and final decisions. See Rules 12D-9.029(4), 12D-9.030(4), and 12D-9.032(5), F.A.C.  
24  
25 \* The Form DR-485 series has separate sections for findings of fact and conclusions  
26 of law. Additional sheets may be attached to the form if more space is needed to  
27 properly complete the required sections listed on the form.

28  
29 For producing written remand decisions, the Board or special magistrate must correctly  
30 complete Form DR-485R, which also has a separate section for appropriate directions  
31 to the property appraiser.

32  
33 For producing recommended decisions on value petitions, an appraiser special  
34 magistrate must correctly complete Form DR-485V.

35  
36 For producing recommended decisions on exemption, classification, or portability  
37 petitions, an attorney special magistrate must correctly complete Form DR-485XC.

38  
39 For producing final decisions, the Board must use Form DR-485V for value petitions  
40 and must use Form DR-485XC for exemption, classification, or portability petitions.

### 41 42 43 **Statements on Board Decisions by the Auditor General**

44 The Florida Auditor General reports to and works for the Florida Legislature. Generally,  
45 the Auditor General is authorized to conduct performance audits of state and local  
46 governments.

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1 Auditor General's [Report No. 2006-007](#), issued in July 2005, contained the results of the  
2 Auditor General's performance audit of value adjustment boards.

3  
4 This report contains criticisms of past written decisions of value adjustment boards.

5  
6 This Auditor General's report contained the following two statements:  
7

8 \* *"Our review of the written decisions of the special masters and the Boards revealed  
9 that 37 percent of the written decisions (52 of 139) from Boards in 11 counties...did  
10 not contain sufficient details in the finding of facts section of the written decisions to  
11 satisfy the applicable requirements of the above-cited statute and rule."*

12  
13 \* *"We recommend that the Boards review the content of written findings and  
14 conclusions, whether heard by the Boards or special masters, and ensure that those  
15 findings and conclusions are documented in accordance with Section 194.034(2),  
16 Florida Statutes, and Department of Revenue Rule 12D-10.003(5)(a), Florida  
17 Administrative Code."*

18  
19 **Note:** Rule 12D-10.003(5)(a), cited by the Auditor General in 2005 as shown above,  
20 was later re-numbered to Rule 12D-10.003(3) as part of a rule amendment effective  
21 March 30, 2010. Users of these training materials are directed to current Rule 12D-  
22 10.003(3), F.A.C.  
23  
24

### **Statements on Board Decisions by Florida Courts**

25  
26 Florida court decisions have also commented on the inadequacy of some past written  
27 records.

28  
29 The following four statements appear, along with other statements, in a Florida  
30 appellate court decision that was critical of a Board's written decision. See [Palm Beach  
31 Gardens Community Hospital, Inc. v. Nikolits](#), 754 So.2d 729 (Fla. 4th DCA 1999).  
32

33 \* *"The requirement that the value adjustment board shall contain in its decision findings  
34 of fact and conclusions of law and shall contain reasons for upholding or overturning  
35 the determination of property appraiser is not discretionary but mandatory." Also, see  
36 Subsection 194.034(2), F.S.*

37  
38 \* *"A review of the Record of Decision and Notice of the Value Adjustment Board reveals  
39 the total absence of findings of facts and the total absence of reasons for upholding  
40 the property appraiser."*

41  
42 \* *"Under the heading 'conclusions of law,' the value adjustment board merely states:  
43 'Petitioner did not overcome burden of proof.'"*

44  
45 \* *"Simply saying, as the board did in this case, that the taxpayer failed to carry his  
46 burden of proof is little more than saying, 'sorry, but you lose.'"*  
47

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1 Another Florida appellate court determined that a Board's written decisions were  
2 inadequate and did not meet the requirements of law. See Higgs v. Property Appraisal  
3 Adjustment Board of Monroe County, 411 So.2d 307 (Fla. 3d DCA 1982).

4  
5 This court stated the following regarding the Board's decisions.

6  
7 \* *“Eight of the decisions contain no reasons, findings or conclusions at all; twelve give*  
8 *as a reason ‘condition of building’ or ‘condition of house’; three expand upon this by*  
9 *stating ‘condition of building (or house) not computed properly’; two say ‘land use*  
10 *restricted’; and the remainder variously state ‘income factors,’ ‘set back restrictions,’*  
11 *‘restricted use of land-Old Island District,’ ‘lot location and restricted use,’ and ‘due to*  
12 *condition.’”*

13  
14 \* This court then referred to the *“woeful inadequacy of these statements.”*

15  
16 \* This court also stated the following regarding the decisions of this Board.

17  
18 \* *“The Board does not seriously contend, and indeed cannot, that the written decisions*  
19 *comport with the law's requirements.”*

20  
21 Thus, Florida courts have expressed the importance of timely, written Board decisions  
22 that include appropriate findings of fact, conclusions of law, and reasons for upholding  
23 or overturning the determination of the property appraiser.

### 24 25 26 **Sufficiency of Evidence**

27 When applied to evidence, the term “sufficient” is a test of adequacy. See Rule 12D-  
28 9.027(6), F.A.C.

29  
30 Sufficient evidence is admitted evidence that has enough overall weight, in terms of  
31 relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6),  
32 F.A.C.

33  
34 A particular conclusion is justified when the overall weight of the admitted evidence  
35 meets the standard of proof that applies to the issue under consideration. See Rule 12D-  
36 9.027(6), F.A.C.

37  
38 The Board or special magistrate must consider the admitted evidence and determine  
39 whether it is sufficiently relevant and credible to reach the “preponderance of the  
40 evidence” standard of proof. See Rules 12D-9.025(1)(d), 12D-9.027(5), and 12D-9.027(6),  
41 F.A.C.

### 42 43 44 **Evaluation of the Relevance of Evidence**

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

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1  
2 \* This description means the evidence meets or exceeds a minimum level of  
3 relevance necessary to be admitted for consideration, but does not necessarily  
4 mean that the evidence has sufficient relevance to legally justify a particular  
5 conclusion. See Rule 12D-9.025(2)(b), F.A.C.  
6

7 In evaluating the relevance of evidence, the Board or special magistrate must consider,  
8 as of the January 1 assessment date, how well the evidence relates to the petitioned  
9 property or property owner, as applicable, and to the statutory criteria that apply.  
10

11 Presented below is some information on relevant evidence from recognized sources.  
12

13 *“Relevant evidence is evidence tending to prove or disprove a material fact.”* See Section  
14 90.401, F.S.  
15

16 *“In order for evidence to be relevant, it must have a logical tendency to prove or*  
17 *disprove a fact which is of consequence to the outcome of the action. The definition of*  
18 *relevant evidence in section 90.401 combines the traditional principles of ‘relevancy’*  
19 *and ‘materiality.’ The concept of ‘relevancy’ has historically referred to whether the*  
20 *evidence has any logical tendency to prove or disprove a fact.”* See Ehrhardt’s *Florida*  
21 *Evidence, 2008 Edition, pages 126-127.*  
22

23 *“Included within the section 90.401 definition of relevancy is the concept of materiality;*  
24 *the evidence must ‘tend to prove or disprove a material fact.’ When evidence is offered*  
25 *to prove a fact which is not a matter in issue, it is said to be immaterial.”* See Ehrhardt’s  
26 *Florida Evidence, 2008 Edition, page 129.*  
27

28 *“In order to determine whether evidence has probative value, the fact for which it is*  
29 *offered to prove must be identified. Evidence may be probative of one fact and not of*  
30 *another.”* See Ehrhardt’s *Florida Evidence, 2008 Edition, pages 128-129.*  
31

32 *“Whether the evidence has probative value is an issue for the discretion of the court.”*  
33 *See Ehrhardt’s Florida Evidence, 2008 Edition, page 129.*  
34  
35

### **Evaluation of the Credibility of Evidence**

37 For administrative reviews, “credible evidence” is evidence that is worthy of belief  
38 (believable). See *Black’s Law Dictionary, Eighth Edition, page 596.*  
39

40 The definition above means the evidence meets or exceeds a minimum level of  
41 credibility, but does not necessarily mean that the credible evidence has sufficient  
42 weight to legally justify a particular decision.  
43

44 Generally, the two types of evidence presented in a Board hearing are testimonial  
45 evidence and documentary evidence.  
46

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1 \* Testimonial evidence (testimony) means statements lawfully made by persons at the  
2 hearing.

3  
4 \* Documentary evidence means documentation lawfully presented by persons at the  
5 hearing.

6  
7 To evaluate the credibility of evidence, the Board or special magistrate may consider  
8 factors such as the demeanor of the witnesses and the content, meaning, plausibility,  
9 consistency, reasonableness, and validity of the evidence.

10  
11 The following excerpt on determining the credibility of expert witnesses appears in the  
12 [Florida Standard Civil Jury Instructions](#), approved for publication by the Florida  
13 Supreme Court.

14  
15 \* *“You may accept such opinion testimony, reject it, or give it the weight you think it  
16 deserves, considering the knowledge, skill, experience, training, or education of the  
17 witness, the reasons given by the witness for the opinion expressed, and all the  
18 other evidence in the case.”*

19  
20 It is important that Boards and special magistrates consider the credibility of a unit of  
21 evidence in light of all of the evidence.

22  
23 A text on Florida evidence states the following on weighing testimonial evidence in a  
24 civil case.

25  
26 \* *“What counts is not the volume of the evidence but the quality—not how many  
27 witnesses testify but the persuasiveness of the testimony.”* See *Ehrhardt’s Florida  
28 Evidence, 2008 Edition*, pages 98-99.

29  
30 How can the Board or special magistrate evaluate the credibility of documentary  
31 evidence (documents, photographs, etc.)?

32  
33 Determining whether documentary evidence is authentic (genuine) is part of evaluating  
34 the credibility of the evidence. Genuine means the evidence is what it is claimed to be.

35  
36 Documentary evidence may be authenticated by evaluating its appearance, contents,  
37 substance, internal patterns, or other distinctive characteristics, taken in conjunction  
38 with the circumstances. See ITT Real Estate Equities, Inc. v. Chandler Insurance Agency,  
39 Inc., 617 So.2d 750 (Fla. 4<sup>th</sup> DCA 1993).

40  
41 Other considerations for evaluating documentary evidence may include: the relative  
42 roles of the item’s creator and intended user; the effective date and intended use of the  
43 item; and whether the item is signed.

44  
45

1 **Requirements for Findings of Fact**

2 Florida law requires that remand decisions, recommended decisions, and final decisions  
3 include findings of fact.

4  
5 *“Every decision of the board must contain specific and detailed findings of fact...”* See  
6 Rule 12D-10.003(3), F.A.C.

7  
8 Findings of fact must be produced and kept in writing.

9  
10 As used in this training, the term “findings of fact” includes proposed findings of fact  
11 produced by special magistrates in their recommended decisions.

12  
13 Findings of fact are written statements on factual conclusions based only upon the  
14 evidence or lack thereof.

15  
16 For each of the statutory criteria for the issue under administrative review, the findings  
17 of fact must identify the corresponding admitted evidence or lack thereof. See Rules  
18 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

19  
20 The Board legal counsel is responsible for providing the advice and assistance  
21 necessary to assure that findings of fact are produced in accordance with law.

22  
23 Findings of fact must be sufficiently detailed for third parties to understand the findings,  
24 and to understand the evidence, or lack thereof, and reasoning on which the findings of  
25 fact must be based.

26  
27 Each finding of fact must be properly annotated to its supporting evidence or lack  
28 thereof. See Rule 12D-10.003(3), F.A.C., referring to “basic and underlying finding.” Also, see  
29 Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

30  
31 Findings of fact are those findings on which the conclusions of law rest and which are  
32 supported by evidence or lack thereof. Findings of fact are more detailed than the  
33 conclusions of law but less detailed than a summary of the evidence. See Rule 12D-  
34 10.003(3)(b), F.A.C., referring to “basic and underlying findings” and “ultimate findings.”

35  
36 In arriving at the findings of fact, the Board or special magistrate must determine and  
37 consider the relevance and credibility of the evidence or lack thereof.

38  
39 **Tips for Producing Written Findings of Fact**

40 The written findings of fact should:

41  
42 1. Be based upon the relevance and credibility of the evidence or lack thereof;

43  
44 2. Be reasonably related to statutory attributes of the subject property or, when  
45 applicable, to statutory attributes of the subject property owner;

46

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- 1 3. Be expressed in terms of the statutory criteria that apply to the issue under  
2 administrative review;
- 3
- 4 4. Specifically identify the record evidence, or lack of record evidence, that relates to  
5 each of the statutory criteria that apply to the issue under administrative review, and  
6 specifically state how and why such evidence, or lack of evidence, relates to each of  
7 these criteria;
- 8
- 9 5. Be stated clearly, and answer the questions of “who, what, when, where, how, and  
10 why” regarding the evidence;
- 11
- 12 6. Provide clear support for the conclusions of law that are required in each of the steps  
13 set forth in Rule 12D-9.027, F.A.C., which apply to the issue under administrative  
14 review;
- 15
- 16 7. Provide reasons for upholding or overturning the property appraiser’s determination;  
17 and
- 18
- 19 8. Otherwise meet all requirements of law.
- 20
- 21

### **Requirements for Conclusions of Law**

22 Florida law requires that remand decisions, recommended decisions, and final decisions  
23 include conclusions of law.

24  
25  
26 Conclusions of law must be produced and kept in writing.

27  
28 As used in this training, the term “conclusions of law” includes proposed conclusions of  
29 law produced by special magistrates in their recommended decisions.

30  
31 A conclusion of law is a written statement specifying which part(s) of law apply to a  
32 finding of fact and stating how the law applies to the finding of fact.

33  
34 Conclusions of law must be based on findings of fact. See Rules 12D-9.030(1) and 12D-  
35 9.032(1)(a), F.A.C.

36  
37 The Board attorney is responsible for providing the advice and assistance necessary to  
38 assure that conclusions of law are developed in accordance with law.

39  
40 Conclusions of law must be sufficiently detailed for third parties to understand the  
41 conclusions of law, and to understand the evidence and facts on which the conclusions  
42 must be based.

43  
44 A conclusion of law is usually expressed in the language of a statutory standard and  
45 must be supported by and flow rationally from the findings of fact. See Rule 12D-  
46 10.003(3)(a), F.A.C., referring to “ultimate finding” and “basic and underlying findings.”

47

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### **Tips for Producing Written Conclusions of Law**

The written conclusions of law should:

1. Be based only upon the evidence, the findings of fact, and the provisions of law that apply to the issue under administrative review;
2. Be stated in terms of the provisions of law that apply to the substantive content of the administrative review (see Rule 12D-9.027, F.A.C.) and specifically state how and why the record evidence satisfies or fails to satisfy the applicable statutory criteria;
3. When stating a standard of proof, state only the standard of “preponderance of the evidence;” [See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521)];
4. Specifically and separately address each of the steps set forth in Rule 12D-9.027, F.A.C., which apply to the issue under administrative review;
5. Provide reasons for upholding or overturning the property appraiser’s determination; and
6. Otherwise meet all requirements of law.

### **Specific Requirements for Findings of Fact and Conclusions of Law**

Florida law contains specific requirements for findings of fact and conclusions of law under certain conditions.

In each recommended decision and in each final decision, the conclusions of law must be based on findings of fact. For each of the statutory criteria for the issue under administrative review, the findings of fact must identify the corresponding admitted evidence or lack thereof. See Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

Rule 12D-9.021(8), F.A.C., provides that decisions issued under Rules 12D-9.021(6) or (7), F.A.C., shall not be treated as withdrawn or settled petitions and shall contain:

1. A finding of fact that the petitioner did not appear at the hearing and did not state good cause; and
2. A conclusion of law that the relief is denied and the decision is being issued in order that any right the petitioner may have to bring an action in circuit court is not impaired.

When producing a written remand decision under Rule 12D-9.029(6), F.A.C., the Board or special magistrate shall produce written findings of fact and conclusions of law necessary to determine that a remand is required. See Rule 12D-9.029(4), F.A.C.

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1 Rule 12D-9.029(9)(b), F.A.C., provides that when a petitioner does not notify the Board  
2 clerk that the results of the property appraiser's written remand review are unacceptable  
3 to the petitioner and does not request a continuation hearing, or if the petitioner waives  
4 a continuation hearing, the Board or special magistrate shall issue a decision or  
5 recommended decision that shall contain:

- 6
- 7 1. A finding of fact that the petitioner did not request a continuation hearing or waived  
8 such hearing; and  
9
- 10 2. A conclusion of law that the decision is being issued in order that any right the  
11 petitioner may have to bring an action in circuit court is not impaired.  
12

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

17 \* If not in writing, legal advice from the Board attorney shall be documented within the  
18 findings of fact and conclusions of law. See Rule 12D-9.030(6), F.A.C.  
19  
20

### **Reasons for Recommended Decisions and Final Decisions**

21 All recommended decisions and all final decisions must contain written reasons for  
22 upholding or overturning the property appraiser's determination. See Rules 12D-9.030(1)  
23 and 12D-9.032(1)(a), F.A.C.  
24

25  
26 Reasons are those clearly stated grounds upon which the Board acted. See Rule 12D-  
27 10.003(3)(c), F.A.C.  
28

29 Reasons for upholding or overturning a particular determination of the property  
30 appraiser must be based only upon the evidence, the findings of fact, and the  
31 conclusions of law for that petition.  
32

33 Reasons should be sufficiently detailed for the parties to understand the reasons, and to  
34 understand the evidence, facts, and law on which the reasons must be based.  
35

36 Reasons should be expressed in findings of fact and conclusions of law.