2024~~3~~ 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)** 2024 Changes to Statutory Law
- 2023 Changes to Statutory Law
- 2022 Changes to Statutory Law
- 2021 Changes to Statutory Law
- 2020 Changes to Statutory Law
- ~~2019 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

- Identify the components of the Uniform Policies and Procedures Manual and Accompanying Documents
- Recognize the requirements for Government-in-the-Sunshine in proceedings of the value adjustment board
- Identify internet resources for administrative reviews

Description of This Training Under Florida Law

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

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

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

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

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

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

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

1. The law that applies to the administrative review of assessments;

2. Taxpayer rights in the administrative review process;

3. The composition and operation of the value adjustment board;

4. The roles of the Board, Board clerk, Board legal counsel, special magistrates, and the property appraiser or tax collector and their staff;

5. Procedures for conducting hearings;

6. Administrative reviews of just valuations, classified use valuations, property classifications, exemptions, and portability assessment differences;

7. The review, admissibility, and consideration of evidence;

8. Requirements for written decisions; and

9. The Department's standard measures of value, including the guidelines for real and tangible personal property.

Scope and Intended Use of This Training

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Legal advice from the Board attorney;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Numbers and Titles of Modules in This Training

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

Module 1, titled: Introduction and Overview;

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

Module 3, titled: Procedures Before the Hearing;

Module 4, titled: Procedures During the Hearing;

Module 5, titled: Procedures After the Hearing;

Module 6, titled: Administrative Reviews of Real Property Just Valuations;

Module 7, titled: Administrative Reviews of Classified Use Valuations and Assessed Valuations;

Module 8, titled: Administrative Reviews of Tangible Personal Property Just Valuations;

Module 9, titled: Administrative Reviews of Denials of Exemptions and Property Classifications;

Module 10, titled: Administrative Reviews of Assessment Difference Transfers and Tax Deferrals; and

Module 11, titled: Requirements for Written Decisions.

Definitions and Abbreviations Used in This Training

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

"Agent" means any person who is authorized by the taxpayer to file a petition with the board and represent the taxpayer in board proceedings on the petition. The term "agent" means the same as the term "representative."

"Board" means the county value adjustment board (these terms may be used interchangeably throughout this training).

"Board clerk" or "Clerk" means the clerk of the county value adjustment board.

"Department," unless otherwise designated, means the Department of Revenue.

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

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

"Petitioner" means the taxpayer or the person authorized by the taxpayer to file a petition on the taxpayer's behalf and represent the taxpayer in board proceedings on the petition.

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

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

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

"Evidence" generally means something (including testimony, documents, or tangible objects) that tends to prove or disprove the existence of a disputed fact. See *Black's Law Dictionary, Eighth Edition*, page 595.

"Taxpayer" and "petitioner" have the same meaning and may be used interchangeably throughout this training.

"Parties" means the petitioner and either the property appraiser or the tax collector, as applicable.

"Party" means the petitioner, the property appraiser, or the tax collector, depending on the context.

"Florida Statutes" is abbreviated as "F.S." and "Florida Administrative Code" is abbreviated as "F.A.C."

Intended Audience for This Training

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

1. All special magistrates in counties that use special magistrates; and

2. In counties that do not use special magistrates, the members of the Board or the Board attorney.

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

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

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

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

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

Persons Required to Take This Training But Not Complete the Exam

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

1. In those counties with a population of 75,000 or less where the Board does not use special magistrates, either all Board members or the Board attorney must take all training modules before conducting any hearings, including any updated training modules.

2. Each special magistrate with five years of experience, and who is otherwise qualified, must take the required training modules before conducting any hearings and must complete any applicable updated training modules.

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

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

Persons Required to Complete This Training and Complete the Exam

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

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

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

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

The Florida Property Assessment Appeal System

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

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

* Each of these opportunities is summarized below.

1. Feedback to Taxing Authorities

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

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

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

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

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

2. Informal Conference with the Property Appraiser

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

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

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

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

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

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

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

Taxpayer Rights

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

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

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

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

1. The Right to Know – includes the right to receive notices and be informed about various aspects of the property tax.

2. The Right to Due Process – includes the right to an informal conference with the property appraiser, file value adjustment board petitions, receive notices of results from the value adjustment board, and file lawsuits.

3. The Right to Redress – includes the right to discounts, refunds for overpayment of taxes, and redemption of tax certificates sold for delinquent taxes on real property.

4. The Right to Confidentiality – includes the right for certain taxpayer records to be confidential consistent with the provisions of law.

The Four Sources of Florida Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(NEW) 2024 Changes to Statutory Law

In 2024, changes to statutory law were enacted. These changes will affect administrative reviews of assessments beginning in 2025, and in some cases 2024. 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 2024:

- Amended section 196.1978(3), F.S., to clarify or update the exemption. Amended subparagraph (3)(a)2. to narrow the definition of "newly constructed" to mean an improvement to real property which was substantially completed within 5 years before the date of an applicant's first submission of a request for a certification notice. Amended sub-subparagraph (3)(b)2.b. to include portions of property that are within a newly constructed multifamily project in an area of critical state concern designated by section 380.0552, F.S. or chapter 28-36, Florida Administrative Code, which contain more than 10 units dedicated to housing natural persons or families meeting the income limitations provided in paragraph (3)(d). Created subparagraph (3)(d)2. providing that when determining the value of a unit for purposes of applying exemption, the property appraiser must include in such valuation the proportionate share of the residential common areas, including the land, fairly attributable to such unit. Amended paragraph (3)(k) to provide that units used as a transient public lodging establishment as defined in section 509.013, F.S. are not eligible for this exemption. See Chapter 2024-158, Section 13, Laws of Florida (HB 7073), effective upon becoming a law May 7, 2024 and Chapter 2024-188, Section 4, Laws of Florida (SB 328), effective upon becoming a law May 16, 2024. These amendments to section 196.1978, F.S. apply retroactively to January 1, 2024. See Chapter 2024-158, Section 15, Laws of Florida, (HB 7073), effective upon becoming a law May 7, 2024, and Chapter 2024-188, Section 6, Laws of Florida (SB 328), effective upon becoming a law May 16, 2024.

- Amended section 196.1978(3), F.S. adding paragraph (3)(o) to provide that, beginning with the 2025 tax roll, a taxing authority may elect, by a two-thirds vote of the governing body, not to exempt property from its millage under sub-subparagraph (3)(d)1.a. which exempts 75 percent of the assessed value for units used to house natural persons or families whose annual household income is greater than 80 percent but not more than 120 percent of the median annual adjusted gross income. Under new subparagraph (3)(o)2. the units must also lie within a metropolitan statistical area or region where the number of affordable and available units is greater than the number of renter households in the area or region for the category entitled "0-120 percent AMI." The election to opt out must be by ordinance or resolution that takes effect on the next January 1 after its adoption. The taxing authority must provide the adopted ordinance or resolution to the property appraiser by its effective date. Under new subparagraph (3)(o)7., a property owner who was granted an exemption pursuant to sub-subparagraph (3)(d)1.a. before the taxing

authority's decision to opt out, may continue to receive such exemption each subsequent consecutive year that the property owner applies for and is granted the exemption. This paragraph first applies to the 2025 tax roll. See Chapter 2024-158, Section 16, Laws of Florida, (HB 7073), effective July 1, 2024.

- Created subsection 196.1978(4), F.S. to provide an exemption to portions of property in a newly constructed multifamily project beginning with the January 1 assessment immediately succeeding the date the property was placed in service allowing the property to be used as an affordable housing property that provides housing to natural persons or families meeting the extremely-low-income, very-low income, or low-income limits specified in section 420.0004. The multifamily project must be subject to a land use restriction agreement with the Florida Housing Finance Corporation recorded in the official records that requires that the property be so used for 99 years, must contain more than 70 units that are so used, and must be an improvement to land where an improvement did not previously exist or be a new improvement where an old improvement was removed, which was substantially completed within 2 years before the first submission of an application for exemption. When determining the value of the portion of property used to provide affordable housing for purposes of applying the exemption, the property appraiser must include in such valuation the proportionate share of the residential common areas, including the land, fairly attributable to such portion of property. Property receiving an exemption pursuant to subsection 196.1978(3) or section 196.1979, F.S. is not eligible for this exemption. This subsection first applies to the 2026 tax roll. See Chapter 2024-158, Section 16, Laws of Florida, (HB 7073), effective July 1, 2024.

- Amended section 196.1979, F.S. to add new subsections (6) and (7), renumbering existing subsections as (8) and (9). New subsection (6) provides the property appraiser shall review each application for exemption and determine whether the applicant meets all of the requirements of this section and is entitled to an exemption. A property appraiser may request and review additional information necessary to make such determination. A property appraiser may grant an exemption only for a property for which the local entity has certified as qualified property and which the property appraiser determines is entitled to an exemption. New subsection (7) provides when determining the value of a unit for purposes of applying the exemption, the property appraiser must include in such valuation the proportionate share of the residential common areas, including the land, fairly attributable to such unit. See Chapter 2024-158, Section 14, Laws of Florida, (HB 7073), effective upon becoming a law May 7, 2024 and Chapter 2024-188, Section 6, Laws of Florida (SB 328), effective upon becoming a law May 16, 2024. The amendments to section 196.1979, F.S. apply retroactively to January 1, 2024. See Chapter 2024-158, Section 15, Laws of Florida, (HB 7073), effective upon becoming a law May 7, 2024, and Chapter 2024-188, Section 6, Laws of Florida (SB 328), effective upon becoming a law May 16, 2024.

- Amended section 192.001(11)(d), F.S., to add that for the purpose of tangible personal property constructed or installed by an electric utility, construction work in

progress shall not be deemed substantially completed unless all permits or approvals required for commercial operation have been received or approved. See Chapter 2024-158, Section 1, Laws of Florida (HB 7073). Section 192.001(11)(d), F.S applies retroactively to January 1, 2024. See Chapter 2024-158, Section 2, Laws of Florida, (HB 7073), effective upon becoming a law May 7, 2024.

- Amended section 193.155(4)(b)4., F.S., to provide this paragraph applies to changes, additions, or improvements commenced within five years after the January 1 following the damage or destruction of the homestead. This extends the period from the previous provision which was three years. See Chapter 2024-158, Section 4, Laws of Florida, (HB 7073), effective July 1, 2024.

- Amended section 196.031(7), F.S. to provide if the property owner fails to begin the repair or rebuilding of the homestead property within five years after January 1 following the property's damage or destruction, it constitutes abandonment of the property as a homestead. After the five-year period, the expiration, lapse, nonrenewal, or revocation of a building permit issued to the property owner for the repairs or rebuilding also constitutes abandonment of the property as homestead. See Chapter 2024-158, Section 10, Laws of Florida, (HB 7073), effective July 1, 2024. The amendments to section 196.031, F.S. first apply to the 2025 property tax roll. See Chapter 2024-158, Section 17, Laws of Florida, (HB 7073), effective July 1, 2024.

- Amended section 193.624(1), F.S., to add biogas (as defined in section 366.91, F.S.) as a type of energy that can be collected, transmitted, stored, or used as renewable energy. Created section 193.624(1)(n), F.S., to describe machinery integral to the collection and conversion of biogas. See Chapter 2024-158, Section 5, Laws of Florida, (HB 7073), effective July 1, 2024. The amendments to section 193.624, F.S. first apply to the 2025 property tax roll. See Chapter 2024-158, Section 6, Laws of Florida, (HB 7073), effective July 1, 2024.

- Created subsection 196.011(5), F.S. providing that an annual application for exemption on property used to house a charter school is not necessary; requiring the owner or lessee of such property to notify the property appraiser in specified circumstances; providing penalties. See Chapter 2024-101, Section 4, Laws of Florida, (HB 1285), effective July 1, 2024.

- Created section 196.092, F.S. providing for a property appraiser to provide a person with tentative verification of their eligibility for exemption or discount, relating to ex servicepersons, under section 196.081, 196.082, or 196.091, F.S. See Chapter 2024-217, Section 4, Laws of Florida, (HB 1161), effective July 1, 2024.

- Adopted changes to several statutes to specify the procedure for calculating liens on portions of homestead property as described in section 193.155(10), F.S., relating to the assessment increase limitation, section 193.703(7), F.S., relating to parent or grandparent living quarters, section 196.075(9), F.S., relating to the homestead exemption for persons 65 and older, and sections 196.011(9), F.S., 196.161(1)(b),

F.S., relating to the homestead exemption. Amended these statutes to provide that the property appraiser must include information with the notice of tax lien that explains why the owner is not entitled to the property assessment limitation, the years for which unpaid taxes, penalties, and interest are due, and the way the unpaid taxes, penalties, and interest have been calculated. Before a lien may be filed, the person or entity so notified must be given 30 days to pay the taxes, penalties, and interest. Back taxes are not due for a clerical mistake or omission if the person who received the exemption or limitation as a result voluntarily discloses to the property appraiser that he or she was not entitled to the limitation before the property appraiser notifies the owner of the mistake or omission. Otherwise back taxes are due for any year or years, beginning with the 2025 tax year, that the owner was not entitled to the exemption or limitation within the 5 years before the property appraiser notified the owner of the mistake or omission. See Chapter 2024-158, Sections 4, 7, 9, 11, and 12, Laws of Florida, (HB 7073), effective July 1, 2024. The amendments to these statutes first apply to the 2025 property tax roll. See Chapter 2024-158, Section 17, Laws of Florida, (HB 7073), effective July 1, 2024. Adopted a provision in 192.0105(1)(g), F.S. to include the taxpayer's right to information regarding why the taxpayer was not entitled to the homestead exemption and how tax, penalties, and interest are calculated, See Chapter 2024-158, Section 3, Laws of Florida, (HB 7073), effective July 1, 2024.

- Adopted a proposed amendment to the State Constitution Article VII, Section 6 requiring an annual adjustment for inflation of the second $25,000 homestead exemption to take effect January 1, 2025. The first adjustment would be January 1, 2025. It is only "the additional exemption of up to $25,000 on the assessed valuation greater than $50,000 for all levies other than school district levies" that would be adjusted so the homestead exemption holders that would benefit are the ones that have received some or all of the additional $25,000 above $50,000 starting January 1, 2025. The first $25,000 exemption remains the same with no adjustment. See Chapter 2024-261, Laws of Florida, (HB 7019) and HJR 7017.

2023 Changes to Statutory Law

In 2023, changes to statutory law were enacted. These changes will affect administrative reviews of assessments beginning in 2024, and in some cases 2023. 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 2023:

- Created section 196.1978(1)(b), F.S. to provide land owned entirely by a qualified Section 501(c)(3) organization is eligible for an exemption if such land is leased for a minimum of 99 years for the purpose of and is predominantly used for affordable housing that serves extremely low income, very low income, low income and/or

moderate income as described in section 420.0004, F.S. Predominant use for affordable housing means the square footage of the improvements on the property used for affordable housing is greater than 50% of the square footage of all improvements on the property. This amendment first applies to the 2024 tax roll. See Chapter 2023-17, Section 8, Laws of Florida (SB 102), effective July 1, 2023, titled the "Live Local Act."

- Created section 196.1978(3), F.S., to provide exemption to portions of property in a newly constructed multifamily project of more than 70 units. The exemption is 75% of the assessed value if the qualified property is used to provide housing to natural persons or families whose annual household income is greater than 80% and no more than 120% of median annual adjusted gross income. The exemption is 100% of the assessed value if the qualified property is used to provide housing to natural persons or families whose annual household income does not exceed 80% of median annual adjusted gross income. The multifamily units must be rented for an amount that does not exceed the amount specified by the most recent multifamily rental programs income and rent limit chart posted by the Florida Housing Financing Corporation and derived from the Multifamily Tax Subsidy Projects Income Limits published by the United States Department of Housing and Urban Development or 90% of the fair market value rent determined by a rental market study, whichever is less. The property owner must apply to the FHFC to receive a certification notice. The application requires several documents, including but not limited to a rental market study and the rent received for each unit for which the property owner is requesting the exemption. The FHFC will post the deadline to request the certification notice on its website. The deadline must allow adequate time for a property owner to submit a timely application for exemption to the property appraiser by March 1. By March 1, the owner must submit an exemption application form and required documents to the property appraiser. Since this legislation states in subsection 196.1978(3)(b) that sections 196.195 and 196.196, are notwithstanding, regarding criteria for determining nonprofit status of the applicant and charitable use, the criteria in those statutes do not apply. This exemption is not available to units for which the owner has entered into an agreement with FHFC pursuant to Chapter 420 to provide housing to natural persons or families meeting the extremely-low-income, very-low-income, or low-income limits or if the property receives an exemption pursuant to the new section 196.1979, F.S. This amendment first applies to the 2024 tax roll. See Chapter 2023-17, Section 8, Laws of Florida (CS/SB 102), effective July 1, 2023 titled the "Live Local Act."

- Created section 196.1979, F.S. to authorize counties and cities to adopt ordinances to exempt portions of property used to provide affordable housing. Such ordinance may exempt portions of property housing natural persons or families whose annual household income is greater than 30% and no more than 60% of median annual adjusted gross income or such ordinance may exempt portions of property housing natural persons or families whose annual household income is no greater than 30% of median annual adjusted gross income. The property must be a multifamily project of at least 50 units at least 20% of which are used to provide affordable housing. The

exemption is up to 75% of the assessed value of each unit if fewer than 100% of the residential units are used to provide affordable housing. The exemption is up to 100% of the assessed value if 100% of the residential units are used to provide affordable housing. The portions of property must be rented for an amount no greater than the amount specified by the most recent multifamily rental programs income and rent limit chart posted by the Florida Housing Financing Corporation and derived from the Multifamily Tax Subsidy Projects Income Limits published by the United States Department of Housing and Urban Development or 90% of the fair market value rent determined by a rental market study, whichever is less. The portions of property must not have been cited for code violations on three (3) or more occasions in the past 24 months; must not have been cited for code violations that are still outstanding; and must not have any unpaid fines or charges related to old code violations. An owner must apply to a designated local entity and receive a certification that the property is qualified. The county or city will post the deadline to request the certification notice on its website. The deadline must allow adequate time for a property owner to submit a timely application for exemption to the property appraiser by March 1. By March 1, the owner must submit an exemption application form and required documents to the property appraiser. The exemption still applies to a residential unit that is vacant on January 1 of the tax year but qualified in the previous year, if the unit is restricted to occupancy by a qualifying tenant and a reasonable effort is being made to lease the unit to an eligible person or family. Since this legislation states in subsection 196.1979(1)(a) that sections 196.195 and 196.196, are notwithstanding, regarding criteria for determining nonprofit status of the applicant and charitable use, the criteria in those statutes do not apply. See Chapter 2023-17, Section 9, Laws of Florida (SB 102), effective July 1, 2023 titled as the "Live Local Act."

- Created section 196.081(1)(b)2., F.S., to provide that a veteran or veteran's surviving spouse may receive a prorated refund of property taxes paid on property on which legal or beneficial title is acquired between January 1 and November 1, if the veteran or veteran's surviving spouse applies for and receives an exemption under section 196.081, F.S. on the acquired property in the next tax year. Under this amendment the veteran or veteran's surviving spouse need not have received the exemption on previously owned parcel in the previous year. The refund is prorated as of the date of transfer. If the property appraiser determines the veteran or spouse is entitled to an exemption under section 196.081, F.S., on the newly acquired property, the law provides for the property appraiser to make entries on the tax roll necessary to allow the prorated refund of taxes for the previous tax year. Amended section 196.081(4), F.S., to state that a deceased veteran who died from service-connected causes while on active duty need not have been a permanent resident of Florida on January 1 of the year the veteran died in order for the veteran's surviving spouse to qualify for an exemption. This amendment first applies to the 2024 tax roll. See Chapter 2023-157, Sections 8 and 9, Laws of Florida (HB 7063), effective July 1, 2023.

- Amended section 196.081, F.S., making several clarifying revisions to the section. Revised section 196.081(1)(b), F.S., changing "may" receive a refund to "is entitled

to" a refund. Revised sections 196.081(3), 196.081(4)(b), and 196.081(6)(b). F.S., to indicate surviving spouses of totally and permanently disabled veterans, service persons killed in action and first responders may transfer the exemption rather than that the exemption "may be transferred." These provisions are remedial and clarifying and provide no refund of taxes paid before the act becomes a law. See Chapter 2023-157, Sections 6 and 7, Laws of Florida (HB 7063), effective May 25, 2023 upon becoming a law.

- Amended section 196.081(6) and (6)(c), F.S. to include the surviving spouse of a first responder employed by the United States Government eligible to qualify for the exemption. Amended the same section to provide a first responder need not have been a permanent resident of Florida on January 1 of the year the first responder died in order for the first responder's surviving spouse to qualify for an exemption. This amendment applies to assessments beginning with the 2024 tax roll. See Chapter 2023-157, Sections 8 and 9, Laws of Florida (HB 7063), effective July 1, 2023.

- Created section 196.196(6), F.S., to provide that property used as a parsonage, burial grounds, or tomb and owned by a house of public worship is used for a religious purpose. Amendments made by this act are remedial and clarifying in nature and do not provide a basis for an assessment of any tax or create a right to a refund of any tax paid before July 1, 2023. See Chapter 2023-157, Sections 10 and 11, Laws of Florida (HB 7063), effective July 1, 2023.

- Amended section 196.198, F.S., to provide property is deemed owned by an educational institution if the educational institution is a lessee that owns the leasehold interest in a bona fide lease for a nominal amount per year having an original term of 98 years or more. Land, buildings, and other improvements to real property used exclusively for educational purposes are deemed owned by an educational institution if the institution currently using the land, buildings, and other improvements for educational purposes received the exemption under section 196.198, F.S., on the same property in any 10 consecutive prior years. See Chapter 2023-157, Section 12, Laws of Florida (HB 7063), effective July 1, 2023.

- Amended section 197.319, F.S. to make several revisions to the catastrophic event refund process. Redefined "postcatastrophic event just value" as the just value of the residential parcel on January 1 of the year in which a catastrophic event occurred, adjusted by subtracting the just value of the residential improvement on January 1 of the year in which the catastrophic event occurred. Revised the definition of "residential improvement" as a residential dwelling or house on real estate used and owned as a homestead as defined in section 196.012(13), F.S., or nonhomestead residential property as defined in s. 193.1554(1), F.S. Amended the definition of "uninhabitable" as the loss of use and occupancy of a residential improvement for the purpose for which it was constructed resulting from damage to or destruction of, or from a condition that compromises the structural integrity of, the residential improvement which was caused by a catastrophic event. A property owner must file an application for refund of taxes paid for the year in which a catastrophic event

occurs with the property appraiser by March 1 of the year following the catastrophic event. The application for refund must describe the catastrophic event. To determine uninhabitability, the application must be accompanied by supporting documentation, including, but not limited to utility bills, insurance information, contractor's statements, building permit applications, or building inspection certificates of occupancy. No later than April 1 of the year following the date the event occurred, the property appraiser must notify the applicant if the property appraiser determines the applicant is not entitled to receive a refund. If the property appraiser determines the applicant is not entitled to a refund, the applicant may file a petition with the value adjustment board requesting the refund be granted. Added provision that the petition to the value adjustment board must be filed with the value adjustment board on or before the 30th day following the issuance of the notice by the property appraiser. The property appraiser must issue an official written statement to the tax collector and applicant, if the property appraiser determines the applicant is entitled to a refund, within 30 days after the determination but no later than by April 1 of the year following the date on which the catastrophic event occurred. The tax collector shall calculate the damage differential. If the taxes for the year the catastrophic event occurred have been paid, the tax collector must process a refund in an amount equal to the catastrophic event refund. If the property taxes for the year in which the event occurred have not been paid, the tax collector must process a refund in an amount equal to the catastrophic refund event refund only upon receipt of timely payment of property taxes for the year in which the event occurred. For purposes of this section, a residential improvement that is uninhabitable has no value. The catastrophic event refund is determined only for purposes of calculating tax refunds for the year in which the residential improvement is uninhabitable because of a catastrophic event and does not determine a parcel's just value as of January 1 of any following year. Amendments made by this act first apply to the 2024 tax roll. See Chapter 2023-157, Sections 13 and 14, Laws of Florida (HB 7063), effective July 1, 2023.

- Created section 197.3181, F.S., to provide a prorated refund of property taxes for residential improvements rendered uninhabitable for at least 30 days by Hurricane Ian or Hurricane Nicole during the 2022 calendar year. The bill defines the terms: uninhabitable; damage differential; disaster relief refund; percent change in value; postdisaster just value; and residential improvement. "Residential improvement" means a residential dwelling or house on real estate used and owned as a homestead as defined in s. 196.012(13) or used as nonhomestead residential property as defined in section 193.1554(1). F.S. If a residential improvement is rendered uninhabitable for at least 30 days due to Hurricane Ian or Hurricane Nicole, 2022 taxes originally levied and paid may be refunded pro rata based on a portion of their property taxes for the time the property was uninhabitable. To receive a refund, the property owner must file an application with the property appraiser no sooner than January 1, 2023, and no later than April 3, 2023. The application must identify the parcel containing the residential improvement rendered uninhabitable, and the number of days the improvement was uninhabitable during 2022. The application must be accompanied by supporting documentation and verified under oath. Failure

to file such an application by April 1, 2023, waives a property owner's claim for a refund. Upon review, no later than June 1, 2023, the property appraiser must either notify the applicant of ineligibility or notify both the applicant and tax collector if the applicant is eligible for a refund. Applicants found ineligible may file a petition with the value adjustment board requesting that a refund be granted. Section 197.3181, F.S., applies retroactively to January 1, 2022, and expires January 1, 2024. See Chapter 2022-272, Section 3, Laws of Florida, (SB 0004A), effective December 16, 2022.

- Amended section 194.036(1)(b), F.S., to increase the thresholds and variances for lawsuits. Under the amendments, if a property appraiser disagrees with the decision of the value adjustment board, the property appraiser may appeal to circuit court if one or more of following variances are met: 20 percent variance from any assessment of $250,000 or less; 15 percent variance from any assessment in excess of $250,000 but not in excess of $1 million; 10 percent variance from any assessment in excess of $1 million but not in excess of $2.5 million; or 5 percent variance from any assessment in excess of $2.5 million. See Chapter 2023-157, Section 5, Laws of Florida (HB 7063), effective July 1, 2023.

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

- Amended section 196.202(1), F.S., to increase the exemptions for bona fide Florida residents who are widows, widowers, blind, or totally and permanently disabled from $500 to $5,000, for each exemption. The increase first applies to the 2023 tax roll. See Chapter 2022-97, Sections 12 and 13, Laws of Florida, (CS/HB 7071), effective January 1, 2023.

- Amended section 196.1978(2)(a), F.S., to specify the method of calculating the 15-year waiting period for an affordable housing exemption for a multifamily project. The 15 years is calculated based on the earliest of three (3) dates:
  1. The effective date of the recorded agreement with the Florida Housing Finance Corporation,
  2. The first day of the first taxable year in which the property was placed in service as an affordable housing property, or
  3. The date the property received a certificate of occupancy or certificate of substantial completion, allowing the property to be used as affordable housing.

  This amendment first applies to the 2023 tax roll. See Chapter 2022-97, Sections 10, 11 and 55, Laws of Florida, (CS/HB 7071), effective July 1, 2022.

- Amended section 196.031, F.S., to create a new subsection (5) which provides for purposes of applying exemptions listed in that section, exempt real property includes portions of the real property and contiguous real property assessed solely on the

basis of character or use pursuant to sections 193.461 or 193.501, F.S., or assessed pursuant to section 193.505, F.S. The amendments do not affect the provisions in section 193.155, F. S., limiting the application of that section to the residence and curtilage. The amendments to section 196.031, F.S. are intended to be remedial and clarifying in nature and apply retroactively, but do not create a right to a refund of any tax paid before the effective date of July 1, 2022. See Chapter 2022-97, Sections 5 and 6, Laws of Florida, (CS/HB 7071), effective July 1, 2022.

- Amended section 194.032(1)(b), F.S., to allow a value adjustment board to hear appeals pertaining to a property appraiser's denial of tax abatements under section 197.3195, F.S., relating to destruction caused by a sudden and unforeseen collapse, and, starting in 2023, tax refunds under section 197.319, F.S., relating to residential improvements rendered uninhabitable by a catastrophic event. Although section 194.032(1)(b), F.S., permits 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 section 197.3195, F.S., this statute requires the value adjustment board to enter a final decision that dismisses any petition filed concerning the value of the parcel for the year of destruction. Also, since section 197.319, F.S., is not effective until January 1, 2023, the amendment permitting the value adjustment board to meet and hear petitions filed under that statute will not apply until the 2023 value adjustment board. The law specifies that section 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 section 197.3195, F.S. due to a sudden and unforeseen collapse. See Chapter 2022-97, Section 4, Laws of Florida, (CS/HB 7071), effective May 6, 2022.

- Amended section 196.173(2), F.S., which provides an exemption for deployed servicemembers. The law change extended the application deadline to June 1, 2022 or, if the taxpayer shows extenuating circumstances for failure to timely file, until the 25th day after the property appraiser mails the TRIM notice The amendment removed Operation Observant Compass, which began in October 2011. The amendment added Operation Enduring Freedom - Horn of Africa, which began in January 2015, and added European Reassurance Initiative/ European Deterrence Initiative, which began in 2014. These amendments apply to the 2022 ad valorem tax roll. See Chapter 2022-97, Sections 7, 8, and 9, Laws of Florida, (CS/HB 7071), effective May 6, 2022.

- Amended section 570.85, F.S., relating to agritourism, to remove a requirement that agritourism be a "secondary" stream of revenue for a bona fide agricultural operation. The requirement of primary use for agriculture in section 193.461(3)(b), F.S., is retained after amending the agritourism statute. Amended section 570.87, F.S. to provide an agricultural classification pursuant to section 193.461, F.S. may not be denied or revoked solely due to the conduct of agritourism activity on a bona fide farm or the construction, alteration, or maintenance of a nonresidential farm building, structure, or facility on a bona fide farm which is used to conduct agritourism activities. So long as the building,

structure, or facility is an integral part of the agricultural operation, the land it occupies shall be considered agricultural in nature. However, such buildings, structures, and facilities, and other improvements on the land, must be assessed under section 193.011, F.S. at their just value and added to the agriculturally assessed value of the land. See Chapter 2022-77, Laws of Florida, (SB 1186), effective July 1, 2022.

2021 Changes to Statutory Law

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

Legislation enacted in 2021:

- Amended section 196.075(4)(d), and (5) F.S., which provides an additional homestead exemption for persons 65 and older. The amendment to section 196.075(4)(d), F.S., requires an ordinance enacted by a local government authorizing an additional homestead exemption for low-income seniors must require the taxpayer to submit a sworn statement of household income when claiming the exemption for the first time. The amendment to section 196.075(5), F.S., provides that the property appraiser notifies each taxpayer of the adjusted income limitation each year. The taxpayer must respond by May 1 if their income exceeds the limitation. The property appraiser may conduct random audits of the taxpayers' sworn statements. See Chapter 2021-208, Section 1, Laws of Florida, (HB 597), effective July 1, 2021.

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

- Repealed section 193.019, F.S., relating to the exemption for hospitals and community benefit reporting. See Chapter 2021-31, Section 1, Laws of Florida, (HB 7061), effective May 21, 2021.

- Amended section 193.155(3)(a), F.S., to exclude additional transfers from being considered changes in ownership. Created section 193.155(3)(a)1.d., F.S., to exclude a change or transfer via an instrument in which the owner entitled to the homestead exemption is listed as both grantor and grantee of the real property and one or more other individuals, all of whom held title as joint tenants with rights or survivorship with the owner are named only as grantors and removed from the title. Created section 193.155(3)(a)5., F.S., to exclude a transfer of property involving multiple owners holding title as joint tenants with rights of survivorship in which one or more owners were entitled to and received homestead exemption on the property; one or more owners dies; and subsequent to the transfer, the surviving owner(s) previously entitled to and receiving homestead exemption continue to be entitled to and receive the homestead exemption. See Chapter 2021-31, Section 2, Laws of Florida, (HB 7061), effective July 1, 2021.

- 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.

- Amended section 193.1554(6)(b), F.S. to provide that changes, additions, or improvements that replace all or a portion of nonhomestead residential 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 nonhomestead property's assessed value as of the January 1 prior to the date on which the damage or destruction was sustained, when (a. the square footage of the property as changed or improved does not exceed 110 percent of the square footage of the property before the damage or destruction, or (b. the total square footage of the property as changed or improved does not exceed 1,500 square feet. See Chapter 2021-31, Sections 4 and 7, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable retroactively to assessments made on or after January 1, 2021.

- Amended section 193.1555(6)(b), F.S. to provide that changes, additions, or improvements that replace all or a portion of real 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 nonresidential real property's assessed value as of the January 1 prior to the date on which the damage or destruction was sustained, when (a. the square footage of the property as changed or improved does not exceed 110 percent of the square footage of the property before the damage or destruction, or (b. the total square footage of the property as changed or improved does not exceed 1,500 square feet. See Chapter 2021-31, Sections 6 and 7, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable retroactively to assessments made on or after January 1, 2021.

- Amended section 196.196(2), F.S., to provide that portions of a property that are not predominantly used for charitable, religious, scientific, or literary purposes are not exempt from taxation, and that an exemption for the portions of property used for charitable, religious, scientific, or literary purposes is not affected so long as the predominant use of such property is for charitable, religious, scientific, or literary purposes. The amendment applies to taxable years beginning on or after January 1, 2022, and does not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before July 1, 2021. See Chapter 2021-31, Sections 8 and 9, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable beginning January 1, 2022.

- Amended section 196.1978(2), F.S., affordable housing property exemption, removing the ad valorem tax discount of 50 percent and enacting an exemption of 100 percent on multifamily projects that provide housing to extremely-low-income, very-low-income, or low-income families. Such a multifamily project will receive the exemption beginning on January 1 of the year following the 15th year of such an agreement. See Chapter 2021-31, Section 10, Laws of Florida, (HB 7061), effective July 1, 2021.

- Amended section 196.198, F.S., educational property exemption, to provide that land, buildings, and other improvements used exclusively for educational purposes shall be deemed owned by an educational institution if the educational institution that currently uses the land, buildings, and other improvements for educational purposes is an educational institution described under s. 212.0602, F.S, and, under a lease, the educational institution is responsible for any taxes owed and for ongoing maintenance and operational expenses for the land, buildings, and other improvements. The owner of the property must disclose to the educational institution the full amount of the benefit derived from the exemption and the method for ensuring the educational institution receives the benefit so that the educational institution receives the full benefit of the exemption. Also, property owned by a house of public worship and used by an educational institution for educational purposes limited to students in preschool through grade 8 is exempt. The amendment relating to property owned by a

house of public worship is remedial and clarifying in nature and applies to actions pending as of July 1, 2021. See Chapter 2021-31, Sections 11 and 12, Laws of Florida, (HB 7061), effective July 1, 2021.

2020 Changes to Statutory Law

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

Legislation enacted in 2020:

- Amended section 196.173(2), F.S., which provides an exemption for deployed servicemembers. The law change extended the application deadline to June 1, 2020 and removed Operation Enduring Freedom, which began October 7, 2001, and ended December 31, 2014. The amendment added Operation Juniper Shield, which began in February 2007; Operation Pacific Eagle, which began in September 2017, and Operation Martillo, which began in January 2012. See Chapter 2020-10, Sections 7, 8 and 9, Laws of Florida, (HB 7097), effective upon becoming a law on April 8, 2020, and first applicable to the 2020 ad valorem tax roll.

- Provided that a value adjustment board petition filing fee is not required for petitions of the deployed servicemembers exemption, and provided additional deadlines and procedures for approval of late filed applications for the exemption. Provided that the property appraiser may grant the deployed servicemember exemption if a qualifying applicant files an application for the exemption on or before the 25th day after the property appraiser mails the notice required under section 194.011(1), F.S. If the property appraiser denies the application so filed, the applicant may file a petition with the value adjustment board on or before the 25th day after the property appraiser mails the notice required under section 194.011(1), F.S. The petitioner is not required to pay a filing fee for such petition, notwithstanding section 194.013, F.S. The value adjustment board may grant the exemption if the applicant is qualified and demonstrates extenuating circumstances, as determined by the board, which warrant granting the exemption. See Chapter 2020-10, Section 9, Laws of Florida, (HB 7097), effective upon becoming a law on April 8, 2020, and first applicable to the 2020 ad valorem tax roll.

- Amended section 194.035, F.S. to provide an appraisal performed by a special magistrate is not permitted as evidence in a hearing before a value adjustment board for which the special magistrate serves. An appraisal may not be submitted as evidence to a value adjustment board in any year that the person who performed the

appraisal serves as a special magistrate to that value adjustment board. See Chapter 2020-10, Section 4, Laws of Florida, effective July 1, 2020.

- Created section 193.1557, F.S., relating to assessment of certain property damaged or destroyed by Hurricane Michael in 2018, and providing that sections 193.155(4)(b), 193.1554(6)(b), or 193.1555(6)(b), F.S., relating to assessment of changes, additions or improvements, apply to such changes, additions, or improvements begun within five years after January 1, 2019. The new section 193.1557, F.S., applies to 2019 through 2023 tax years and stands repealed on December 31, 2023. See Chapter 2020-10, Section 3, Laws of Florida, effective July 1, 2020.

- Enacted two amendments to section 196.1978(1), F.S. in Chapter 2020-10, section 10, Laws of Florida, effective upon becoming a law April 8, 2020 and operating retroactive to January 1, 2020; and Chapter 2020-10, Section 11, Laws of Florida, effective January 1, 2021.

  - Section 10 amended section 196.1978(1), F.S., to provide, for property used to provide affordable housing, additional criteria under which vacant units are treated as exempt portions of the affordable housing property. These criteria are: if a recorded land use restriction agreement requires all residential units within the property to be used in a manner that qualifies for the exemption under this subsection and if the vacant units are being offered for rent. effective upon becoming a law and will operate retroactively to January 1, 2020. See Chapter 2020-10, Section 10, Laws of Florida (CS/HB 7097).

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

- Created section 193.019, F.S., effective January 1, 2022, relating to the exemption for hospitals, and providing for community benefit reporting. By January 15 of each year, each applicant for exemption for hospital property shall submit to the Department a copy of the applicant's most recently filed IRS Form 990, Schedule H, with a statement certifying the county net community benefit expense is true and correct, and a schedule displaying information regarding the community benefit expense. By January 15 of each year, each county property appraiser shall calculate and submit to the Department the tax reduction resulting from the property exemption for the prior year granted pursuant to ss. 196.196 and 196.197 for each

property owned by an applicant. The Department must determine if the county net community benefit expense attributed to an applicant's property in a county equals or exceeds the tax reduction resulting from the applicant's exemption for that county. If an applicant's county net community benefit expense does not equal or exceed the tax reduction from the exemption, in two consecutive years, the Department shall notify the property appraiser by March 15 to limit the exemption for the current year by multiplying it by the ratio of the net community benefit expense to the tax reduction resulting from the exemption. See Chapter 2020-10, Section 2, Laws of Florida (CS/HB 7097) effective January 1, 2022.

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

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

~~2019 Changes to Statutory Law~~

~~In 2019, a change to statutory law was enacted. This change affected administrative reviews of assessments beginning in 2019. This change is summarized below and is 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 2019:~~

- ~~Created section 193.4517, Florida Statutes, to provide that for the 2019 tax roll, tangible personal property owned and operated by a farm, farm operation, or agriculture processing facility located in Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Gulf, Gadsden, Liberty, Franklin, Leon, or Wakulla County is deemed to have a market value no greater than its value for salvage if the tangible personal property was unable to be used for at least 60 days due to the effects of Hurricane Michael. "Unable to be used" means the tangible personal property was damaged, or the farm, farm operation, or agricultural processing facility was affected to such a degree that the tangible personal property could not be used for its intended purpose. "Farm" has the same meaning as provided in s. 823.14(3)(a), F.S. and "farm operation" has the same meaning as provided in s. 823.14(3)(b), F.S. The~~

~~deadline for an applicant to file an application with the property appraiser for assessment under this new law is August 1, 2019. If the property appraiser denies an application, the applicant may file, under s. 194.011(3), a petition with the value adjustment board requesting that the tangible personal property be assessed according to this law. Such petition must be filed on or before the 25th day after the mailing by the property appraiser, during the 2019 calendar year, of the notice required under s. 194.011(1). This legislation is effective July 1, 2019 and applies retroactively to January 1, 2019. See Chapter 2019-42, Section 2, Laws of Florida (HB 7123).~~

Statutory Law Effective Beginning With 2009 Assessments

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

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

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

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

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

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

Administrative Rules and Forms

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

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

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

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

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

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

Uniform Policies and Procedures Manual and Accompanying Documents

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

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

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

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

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

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

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

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

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

    c) Recently adopted forms for value adjustment boards;

    d) Florida Statutes regarding value adjustment board procedures; and

    e) A notice regarding the use of case law.

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

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

3. "Reference Materials Including Guidelines."

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

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

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

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

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

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

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

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

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

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

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

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

Complete Text of Specific Legal Provisions for Taxpayer Rights

Florida law provides specific rights for property taxpayers.

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

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

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

Taxpayer Rights in Section 192.0105, F.S.

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

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

(1) THE RIGHT TO KNOW.—

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

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

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

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

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

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

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

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

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

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

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

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

(2) THE RIGHT TO DUE PROCESS.—

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

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

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

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

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

(f) The right, in value adjustment board proceedings, to have all evidence presented and considered at a public hearing at the scheduled time, to be represented by a person

specified in s. 194.034(1)(a), (b), or (c), to have witnesses sworn and cross-examined, and to examine property appraisers or evaluators employed by the board who present testimony (see ss. 194.034(1)(d) and (4), and 194.035(2)).

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

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

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

(3) THE RIGHT TO REDRESS.—

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

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

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

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

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

(f) The right to redeem real property and redeem tax certificates at any time before full payment for a tax deed is made to the clerk of the court, including documentary stamps and recording fees, and the right to have tax certificates canceled if sold where taxes had been paid or if other error makes it void or correctable. Property owners have the

right to be free from contact by a certificateholder for 2 years after April 1 of the year the tax certificate is issued (see ss. 197.432(13) and (14), 197.442(1), 197.443, and 197.472(1) and (6)).

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

(4) THE RIGHT TO CONFIDENTIALITY.—

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

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

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

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

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

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

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

(2) These rights include:

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

(b) The right to request an informal conference with the property appraiser regarding the correctness of the assessment or to petition for administrative or judicial review of

property assessments. An informal conference with the property appraiser is not a prerequisite to filing a petition for administrative review or an action for judicial review;

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

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

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

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

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

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

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

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

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

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

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

(n) The right to be issued a timely written decision within 20 calendar days of the last day the board is in session pursuant to Section 194.034, F.S., by the value adjustment

board containing findings of fact and conclusions of law and reasons for upholding or overturning the determination of the property appraiser or tax collector;

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

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

(q) The right to have federal tax information, ad valorem tax returns, social security numbers, all financial records produced by the taxpayer and other confidential taxpayer information, kept confidential; and

(r) The right to limiting the property appraiser's access to a taxpayer's records to only those instances in which it is determined that such records are necessary to determine either the classification or the value of taxable nonhomestead property."

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://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%C7%82%C7%82496e666f726d6174696f6e616c2042756c6c6574696e73%5C%22%22%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

Attorney General Opinions on the internet at:
http://myfloridalegal.com/ago.nsf/Opinions

Florida Statutes on the internet at:
http://www.flsenate.gov/Laws/Statutes

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

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

Training Module 2 addresses the following topics:

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

Learning Objectives

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

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

The Composition of the Value Adjustment Board

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

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

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

(b) One member of the school board of the county, elected by the school board from among its members; and

(c) Two citizen members:

1. One who owns homestead property in the county appointed by the county's governing body;

2. One who owns a business that occupies commercial space located within the school district appointed by the school board of the county. This person must, during the entire course of service, own a commercial enterprise, occupation, profession, or trade conducted from a commercial space located within the school district and need not be the sole owner.

3. Citizen members must not be:

a. A member or employee of any taxing authority in this state;

b. A person who represents property owners, property appraisers, tax collectors, or taxing authorities in any administrative or judicial review of property taxes.

4. Citizen members shall be appointed in a manner to avoid conflicts of interest or the appearance of conflicts of interest.

(2)(a) Each elected member of the value adjustment board shall serve on the board until he or she is replaced by a successor elected by his or her respective governing body or school board or is no longer a member of the governing body or school board of the county.

(b) When an elected member of the value adjustment board ceases being a member of the governing body or school board whom he or she represents, that governing body or school board must elect a replacement.

(c) When the citizen member of the value adjustment board appointed by the governing body of the county is no longer an owner of homestead property within the county, the governing body must appoint a replacement.

(d) When the citizen member appointed by the school board is no longer an owner of a business occupying commercial space located within the school district, the school board must appoint a replacement.

(3)(a) At the same time that it selects a primary member of the value adjustment board, the governing body or school board may select an alternate to serve in place of the primary member as needed. The method for selecting alternates is the same as that for selecting the primary members.

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

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

1. One member of the governing body of the county;

2. One member of the school board; and

3. One of the two citizen members.

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

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

The Role of the Value Adjustment Board

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

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

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

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

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

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

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

1. Hearing petitions relating to assessments filed pursuant to Section 194.011(3), F.S.;

2. Hearing complaints relating to homestead exemptions as provided for under Section 196.151, F.S.;

3. Hearing appeals from exemptions denied, or disputes arising from exemptions granted, upon the filing of exemption applications under Section 196.011, F.S.;

4. Hearing appeals concerning ad valorem tax deferrals and classifications; or

5. Hearing appeals from determinations that a change of ownership under Section 193.155(3), F.S., a change of ownership or control under Section 193.1554(5) or 193.1555(5), F.S., or a qualifying improvement under Section 193.1555(5), F.S., has occurred.

The Board may not meet earlier than July 1 to hear appeals pertaining to the denial of exemptions, agricultural and high-water recharge classifications, classifications as historic property used for commercial or certain nonprofit purposes, ~~and~~ deferrals, and refunds due to catastrophic events based on the statutory criteria in Section 197.319, F.S. See Rule 12D-9.005(1)(b), F.A.C.

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

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

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

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

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

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

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

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

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

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

1. The Board clerk or personnel performing Board duties from referring petitioners to the property appraiser or tax collector for issues within the responsibility of the property appraiser or tax collector; or

2. The property appraiser from providing data to assist the Board clerk with the notice of tax impact. See Rule 12D-9.005(2)(c), F.A.C.

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

The Role of the Clerk of the Value Adjustment Board

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Notify the petitioner of the date and time scheduled for the appearance; and

2. Simultaneously notify the property appraiser or tax collector.

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

1. Notify the petitioner of the incomplete petition; and

2. Allow the petitioner an opportunity to complete the petition within 10 calendar days from the date the notice of incomplete petition is mailed.

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

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

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

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

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

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

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

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

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

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

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

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

(a) All filed documents;

(b) A verbatim record of any hearing;

(c) All tangible exhibits and documentary evidence presented;

(d) Any meeting minutes; and

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

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

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

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

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

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

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

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

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

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

Requirements for Appointment of Board Legal Counsel

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

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

1. Must be an attorney in private practice;

2. Must not be employed by government; and

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

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

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

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

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

Bulletin 2008-12
https://floridarevenue.com/TaxLaw/Documents/OTH-78289_PTO%20BUL%2008-12.pdf

Bulletin 2008-18
https://floridarevenue.com/TaxLaw/Documents/OTH-78295_PTO%20BUL%2008-18.pdf

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

The Role of Legal Counsel to the Value Adjustment Board

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

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

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

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

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

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

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

1. *Composition and quorum requirements;*
2. *Statutory training and qualification requirements for special magistrates and members of the board;*
3. *Legal requirements for recommended decisions and final decisions;*
4. *Public meeting and open government laws; and*
5. *Any other duties, responsibilities, actions or requirements of the board consistent with the laws of this state."*

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

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

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

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

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

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

<u>The Role of Board Legal Counsel Regarding Applicable Statutory Criteria</u>

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

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

Requirements for Appointment of Special Magistrates

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

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

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

"When appointing special magistrates, the board, board attorney, and board clerk shall not consider any assessment reductions recommended by any special magistrate in the current year or in any previous year."

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

1. Be based solely on the experience and qualifications of the magistrate; and

2. Not be influenced by any party, or prospective party, to a Board proceeding or by any such party with an interest in the outcome of the proceeding.

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

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

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

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

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

"The special magistrate must meet the following qualifications:

(a) A special magistrate must not be an elected or appointed official or employee of the county.

(b) A special magistrate must not be an elected or appointed official or employee of a taxing jurisdiction or of the State.

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

(d) All special magistrates must meet the qualifications specified in Section 194.035, F.S."

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

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

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

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

1. Have not less than five years of real property valuation experience and have received the Department's training; or

2. Have not less than three years of real property valuation experience and have completed the Department's training including the exam.

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

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

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

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

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

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

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

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

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

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

The Role of Special Magistrates

The Florida Attorney General has recognized that:

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

2. The official acts of the special magistrate are subject to Florida's Government-in-the-Sunshine law in section 286.011, F.S. See Attorney General Opinion 2010-15.

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

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

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

(b) At the request of either party, administer the oath upon the property appraiser or tax collector, each petitioner and all witnesses testifying at a hearing;

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

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

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

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

The Role of the Property Appraiser

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Role of the Petitioner

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

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

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

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.

Module 3:
Procedures Before the Hearing

Training Module 3 addresses the following topics:

- Avoiding Conflicts of Interest
- Organizational Meeting of the Value Adjustment Board
- Prehearing Checklist for the Value Adjustment Board
- Requirements for Petition Form and Filing Fee
- 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

Learning Objectives

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

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

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

Avoiding Conflicts of Interest

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

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

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

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

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

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

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

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

Code of Judicial Conduct and Related Information

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

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

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

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

* The Code of Judicial Conduct is published on the Florida Supreme Court's website.

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

* Boards, Board attorneys, and special magistrates should review and consider the relevant information in the Judicial Ethics Benchguide.

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

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

* This JEAC Opinion Number 2010-06 was issued March 26, 2010.

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

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

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

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

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

Organizational Meeting of the Value Adjustment Board

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

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

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

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

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

1. Introduce the members of the Board and provide contact information;

2. Introduce the Board clerk or any designee of the Board clerk and provide the Board clerk's contact information;

3. Appoint or ratify the private Board legal counsel. At the meeting at which Board legal counsel is appointed, this item shall be the first order of business;

4. Appoint or ratify special magistrates, if the Board will be using them for that year;

5. Make available to the public, special magistrates, and Board members, Rule Chapter 12D-9, F.A.C., containing the uniform rules of procedure for hearings before value adjustment boards and special magistrates (if applicable), and the associated forms that have been adopted by the Department;

6. Make available to the public, special magistrates, and Board members, Rule Chapter 12D-10, F.A.C., containing the rules applicable to the requirements for hearings and decisions;

7. Make available to the public, special magistrates and Board members the requirements of Florida's Government-in-the Sunshine/open government laws including information on where to obtain the current Government-in-the-Sunshine manual;

8. Discuss, take testimony on and adopt or ratify with any required revision or amendment any local administrative procedures and forms of the Board.

    a) Such procedures must be ministerial in nature and not be inconsistent with governing statutes, case law, attorney general opinions, or rules of the Department.

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

9. Discuss general information on Florida's property tax system, respective roles within this system, taxpayer opportunities to participate in the system, and property taxpayer rights;

10. Make available to the public, special magistrates and Board members, Rules 12D-51.001, 51.002, 51.003, F.A.C., and Chapters 192 through 195, F.S., as reference information containing the guidelines and statutes applicable to assessments and assessment administration;

11. Adopt or ratify by resolution any filing fee for petitions for that year, in an amount not to exceed $15; and

12. For purposes of this rule, making available to the public means, in addition to having copies at the meeting, the Board may refer to a website containing copies of such documents.

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

Prehearing Checklist for the Value Adjustment Board

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Requirements for Petition Form and Filing Fee

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

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

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

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

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

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

1. Describe the property by parcel number;

2. Be sworn by the petitioner;

3. State the approximate time anticipated by the petitioner for presenting his or her case, which the Board clerk must consider in scheduling the hearing, and contain a space for the petitioner to indicate dates of non-availability for scheduling purposes if applicable;

4. Contain a space for the petitioner to indicate on the petition form that he or she does not wish to attend the hearing but would like for the Board or special magistrate to consider the petitioner's evidence without the petitioner attending the hearing;

5. Contain a statement that the petitioner has the right, regardless of whether the petitioner initiates the evidence exchange, to receive from the property appraiser a copy of the property record card containing information relevant to the computation of the current assessment, with confidential information redacted, along with a statement that when the property appraiser receives the petition, the property appraiser will either send the property record card to the petitioner or notify the petitioner how to obtain the property record card online.

6. Contain a signature field for the taxpayer to sign the petition and a checkbox for the taxpayer to indicate that she or he has authorized a representative to receive or access confidential taxpayer information related to the taxpayer;

    * Contain a checkbox for the taxpayer to indicate that he or she has authorized a compensated or uncompensated representative to act on the taxpayer's behalf;

* Contain a signature field for an authorized employee or representative to sign the petition, when applicable, along with the authorized employee's or representative's signed certification under penalty of perjury that he or she has the taxpayer's authorization to file the petition on the taxpayer's behalf together with checkboxes for professional information and spaces for license numbers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Persons Authorized to Sign and File Petitions

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

- The taxpayer may sign and file a petition.

- An employee of the taxpayer or of an affiliated entity or a licensed or certified professional listed in paragraph 12D-9.018(3)(a), F.A.C., who the taxpayer has authorized to file a petition and represent the taxpayer and who certifies under penalty of perjury that he or she has the taxpayer's authorization to file a petition on the taxpayer's behalf and represent the taxpayer, may sign and file such a petition that is not signed by the taxpayer and that is not accompanied by the taxpayer's written authorization.

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

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

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

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

Procedures for Duplicate and Unauthorized Petitions

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

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

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

Procedures for Late Filed Petitions

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

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

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

1. The petitioner has demonstrated "good cause" justifying consideration of the petition; and

2. The delay will not, in fact, be harmful to the performance of Board functions in the taxing process. See Rule 12D-9.015(14)(a), F.A.C.

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

1. Personal, family, or business crisis or emergency at a critical time or for an extended period of time that would cause a reasonable person's attention to be diverted from filing; or

2. Physical or mental illness, infirmity, or disability that would reasonably affect the petitioner's ability to timely file; or

3. Miscommunication with, or misinformation received from, the Board clerk, property appraiser, or their staff regarding the necessity or the proper procedure for filing that would cause a reasonable person's attention to be diverted from timely filing; or

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

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

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

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

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

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

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

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

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

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

Acknowledgment of Timely Filed Petitions

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

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

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

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

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

Requirements for Filing and Service of Documents

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

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

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

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

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

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

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

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

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

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

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

Prohibition of Ex Parte Communication

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

1. The other party being present; or

2. Providing a copy of any written communication to the other party. See Rule 12D-9.017(1)(a), F.A.C.

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

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

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

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

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

1. All parties have been notified about the ex parte communication;

2. No party objects to consideration of the communication; and

3. All parties have an opportunity during the hearing to cross-examine, object, or otherwise address the communication.

Representation of the Taxpayer

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

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

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

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

1. An employee of the taxpayer or of an affiliated entity may represent the taxpayer.

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

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

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

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

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

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

Procedures for Scheduling Hearings

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

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

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

2. The experience of the petitioner;

3. The complexity of the issues or the evidence to be presented;

4. The number of petitions/parcels to be heard at a single hearing;

5. The efficiency or difficulty for the petitioner of grouping multiple hearings for a single petitioner on the same day; and

6. The likelihood of withdrawals, cancellations of hearings or failure to appear.

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

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

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

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

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

Procedures for Notifying the Parties of the Scheduled Hearing

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

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

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

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

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

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

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

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

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

1. The parcel number, account number or legal address of all properties being heard at the scheduled hearing;

2. The type of hearing scheduled;

3. The date and time of the scheduled hearing; however, if the petition has been scheduled to be heard within a block of time, the beginning and ending of that block of time shall be indicated on the notice;

4. The time reserved, or instructions on how to obtain this information;

5. The location of the hearing, including the hearing room number if known, together with Board clerk contact information including office address and telephone number, for petitioners to request assistance in finding hearing rooms;

6. Instructions on how to obtain a list of the potential special magistrates for the type of petition in question;

7. A statement of the petitioner's right to participate in the exchange of evidence with the property appraiser;

8. A statement that the petitioner has the right to reschedule the hearing a single time for good cause as defined in Section 194.032(2)(a), F.S.;

9. A statement that Section 194.032(2)(a), F.S., defines "good cause" as circumstances beyond the control of the person seeking to reschedule the hearing which reasonably prevent the party from having adequate representation at the hearing;

10. Instructions on bringing copies of evidence;

11. Any information necessary to comply with federal or state disability or accessibility acts; and

12. Information regarding where the petitioner may obtain a copy of the uniform rules of procedure.

Procedures for Rescheduling Hearings

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

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

- The Board clerk shall ascertain if the opposing party has been furnished a copy of the request, and if not, shall furnish the request to the opposing party. The Board clerk shall promptly forward the reschedule request to the Board or a Board designee to make a determination as to good cause; for this determination, the Board designee includes the Board clerk, Board legal counsel, or a special magistrate.

- The Board or Board designee shall grant the hearing reschedule for any request that qualifies under Section 194.032(2)(a), F.S. The Board or Board designee may act upon the request based on its face and whether it meets the provisions for good cause on its face.

- If the Board or a Board designee determines that the request does not show good cause, the request will be denied and the Board may proceed with the hearing as scheduled.

- If the Board or a Board designee determines that the request demonstrates good cause, the request will be granted.

- Requests to reschedule shall be processed without delay and the processing shall be accelerated where necessary to ensure, if possible, that the parties are provided notice of the determination before the original hearing time.

- The Board clerk shall give prompt notice to the parties of the determination as to good cause. Form DR-485WCN, Value Adjustment Board – Clerk's Notice, is designated and may be used for this purpose. Form DR-485WCN is adopted and incorporated by reference in Rule 12D-16.002, F.A.C.

- If good cause is found, the clerk shall give immediate notice of cancellation of the hearing and shall proceed as provided in paragraph (h).

- The clerk must receive any notice of conflict dates submitted by a party before notice of a rescheduled hearing is sent to both parties or before expiration of any period allowed by the clerk or Board to both parties for such submittal.

- The clerk must reschedule considering conflict dates received and should accommodate a notice of conflict dates when any associated delay will not be prejudicial to the Board's performance of its functions in the taxing process.

- The Board clerk is responsible for notifying the parties of any rescheduling and will issue a notice of hearing with the new hearing date which shall, if possible, be the earliest date that is convenient for all parties.

- When rescheduling hearings under this rule, if the parties are unable to agree on an earlier date, the Board clerk is authorized to schedule the hearing and send a notice of such hearing by regular or certified U.S. mail or personal delivery, or in the manner

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

- The Board clerk is authorized to inquire if a party wants their evidence considered in the event of their absence from the hearing.

- The clerk is authorized to ask the parties if they will waive the 15 days' notice for rescheduled hearings; however, the parties are not required to do so.

- A party must not assume the request to reschedule has been granted until notified by the clerk.

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

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

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

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

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

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

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

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

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

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

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

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

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

Procedures for the Exchange of Evidence

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

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

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

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

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

* A petitioner's noncompliance with section 194.011(4)(a), F.S., does not affect the petitioner's right to receive a copy of the current property record card from the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Petitions Withdrawn, Settled, or Acknowledged as Correct

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

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

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

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

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

1. Petitioner agrees with the determination of the property appraiser or tax collector;

2. Petitioner and property appraiser or tax collector have reached a settlement of the issues;

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

4. Other specified reason.

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

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

1. Issue the petitioner a notice granting said exemption, classification, portability assessment difference transfer, or deferral; and

2. File with the Board clerk a notice that the petition was acknowledged as correct.

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

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

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

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

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

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

Non-Appearance and Summary Disposition of Petitions

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

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

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

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

1. Not commence or proceed with the hearing; and

2. Produce a decision or recommended decision as described below and in Rule 12D-9.021(8), F.A.C. See Rule 12D-9.021(6), F.A.C.

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

1. The decision or recommended decision should be set aside and the hearing should be rescheduled; or

2. The Board or special magistrate should issue the decision or recommended decision. See Rule 12D-9.021(6), F.A.C.

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

1. The hearing should be rescheduled; or

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

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

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

Decisions issued under Rule Subsections 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. See Rule 12D-9.021(8), F.A.C.

Legislation Affecting Certain Board Petitions

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

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

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

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

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

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

Module 4:
Procedures During the Hearing

Training Module 4 addresses the following topics:

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

Learning Objectives

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

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

Disqualification or Recusal of Special Magistrates or Board Members

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

1. Included in the record of the proceeding; or

2. Submitted prior to the hearing in writing to the Board legal counsel.

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

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

1. Such determination shall be issued in writing and placed in the record, and the special magistrate will conduct the hearing; or

2. If a hearing was already held, the recommended decision will be forwarded to the Board in accordance with the Department's rules. See Rule 12D-9.022(2)(b), F.A.C.

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

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

1. Stated in the record of the proceeding; or

2. Submitted prior to the hearing in writing to the Board legal counsel. See Rule 12D-9.022(4)(a), F.A.C.

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

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

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

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

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

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;

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

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

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

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

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

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

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

Procedures for Managing Time Needed for Hearings

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

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

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

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

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

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

Procedures for Commencement of a Hearing

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

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

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

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

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

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

1. States the Board or special magistrate is an independent, impartial, and unbiased hearing body or officer, as applicable;

2. States the Board or special magistrate does not work for the property appraiser or tax collector, is independent of the property appraiser or tax collector, and is not influenced by the property appraiser or tax collector;

3. States the hearing will be conducted in an orderly, fair, and unbiased manner;

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

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

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

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

General Procedures for Conducting a Hearing

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

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

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

1. Review the evidence presented by the parties;

2. Determine whether the evidence presented is admissible;

3. Admit the evidence that is admissible;

4. Identify the evidence presented to indicate that it is admitted or not admitted; and

5. Consider the admitted evidence.

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

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

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

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

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

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

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

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

Procedures for Presentation of Evidence by the Parties

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

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

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

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

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

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

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

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

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

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

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

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

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

    1. A petitioner does not appear at a hearing on a "portability" assessment difference transfer petition in which the previous homestead is the subject of the petition and is located in a county other than the county where the new homestead is located (Rule 12D-9.028(6), F.A.C., provides requirements specific to hearings on these petitions – see Module 10); or

    2. A petitioner has indicated that he or she does not wish to appear at the hearing but would like for the Board or special magistrate to consider evidence submitted by the petitioner.

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

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

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

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

    3. Give the evidence to the Board or special magistrate at the beginning of the hearing.

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

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

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

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

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

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

    1. If the evidentiary materials were provided to the property appraiser no later than fifteen (15) days before the hearing in accordance with the exchange of evidence rules in Rule 12D-9.020, F.A.C.; or

    2. If provided to the property appraiser less than fifteen (15) days before the hearing, but the Board or special magistrate determines that the evidentiary materials were provided a reasonable time before the hearing.

* For purposes of Rules 12D-9.020 and 12D-9.025, F.A.C., reasonableness shall be assumed if the property appraiser does not object. See Rule 12D-9.025(4)(f)1., F.A.C.

* Otherwise, reasonableness shall be determined by whether the material can be reviewed, investigated, and responded to or rebutted in the time frame remaining before the hearing. See Rule 12D-9.025(4)(f)1., F.A.C.

* If a petitioner has acted in good faith and not denied evidence to the property appraiser prior to the hearing, as provided by Section 194.034(1)(h), F.S., but wishes to submit evidence at the hearing which is of a nature that would require investigation or verification by the property appraiser, then the special magistrate may allow the hearing to be recessed and, if necessary, rescheduled so that the property appraiser may review such evidence. See Rule 12D-9.025(4)(f)1., F.A.C.

* A petitioner's ability to introduce the evidence, requested of the petitioner in writing by the property appraiser, is lost if the requested evidence is not provided to the property appraiser as described in Rule 12D-9.025(4)(f), F.A.C.

* This provision does not preclude the presentation and consideration of rebuttal evidence that the property appraiser did not specifically request from the petitioner. See Rule 12D-9.025(4)(f)1., F.A.C.

Examples of Taxpayer's Rebuttal Evidence

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

Rebuttal Evidence: Example 1

The taxpayer initiates an evidence exchange with the property appraiser.

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

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

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

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

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

Rebuttal Evidence: Example 2

The taxpayer initiates an evidence exchange with the property appraiser.

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

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

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

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

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

Rebuttal Evidence: Example 3

The taxpayer initiates an evidence exchange with the property appraiser.

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

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

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

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

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

Admissibility of Evidence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> Bulletin: PTO 10-07
> https://floridarevenue.com/TaxLaw/Documents/OTH-120190_PTO_BUL_10-07_VAB_Hearings_and_Confidentiality.pdf

The Higgs v. Good Case and Admissibility of Taxpayer Evidence

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

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

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

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

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

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

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

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

> **"*Administrative penalties.*—** *No administrative agency, except the Department of Military Affairs in an appropriately convened court-martial action as provided by law, shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law.*" [underlined emphasis added]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Standard of Proof

In administrative reviews, Boards or special magistrates must consider admitted evidence and then compare the weight of the evidence to a "standard of proof" to make a determination on an issue under review.

"Standard of proof" means the level of proof needed by the Board or special magistrate to reach a particular conclusion. See Rule 12D-9.027(5), F.A.C.

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

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

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

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

Procedures for Asking Questions During the Hearing

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

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

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

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

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

Procedures for Collecting and Presenting Additional Evidence

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

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

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

If additional hearing time is necessary, the hearing must be completed at the date, place, and time agreed upon for presenting the additional evidence to the Board or special magistrate for consideration. See Rule 12D-9.025(6)(b), F.A.C.

Rule 12D-9.025(6)(c), F.A.C., in a petition to decrease the just value, provides that the following limitations shall apply if the property appraiser seeks to present additional evidence that was unexpectedly discovered and that would increase the assessment.

1. The Board or special magistrate shall ensure that such additional evidence is limited to a correction of a factual error discovered in the physical attributes of the petitioned property; a change in the property appraiser's judgment is not such a correction and shall not justify an increase in the assessment.

2. A notice of revised proposed assessment shall be made and provided to the petitioner in accordance with the notice provisions set out in Florida Statutes for notices of proposed property taxes.

3. Along with the notice of revised proposed assessment, the property appraiser shall provide to the petitioner a copy of the revised property record card containing information relevant to the computation of the revised proposed assessment, with confidential information redacted. The property appraiser shall provide such revised property record card to the petitioner either by sending it to the petitioner or by notifying the petitioner how to obtain it online.

4. A new hearing shall be scheduled and notice of the hearing shall be sent to the petitioner.

5. The evidence exchange procedures in Rule 12D-9.020, F.A.C., shall be available.

6. The back assessment procedure in section 193.092, F.S., shall be used for any assessment already certified.

Note: Rule 12D-9.025(6)(d), F.A.C., added in November, 2023, provides that, in a petition to increase the just value, the property appraiser may provide an increased just value to the petitioner before the hearing or at the hearing. In such case, if the petitioner agrees with the property appraiser's increased just value, the petitioner may settle or withdraw

the petition. If the petitioner does not agree with the property appraiser's increased just value, the hearing shall not be canceled on that ground. This provision applies only in petitions to increase the just value.

Procedures for Conducting a Hearing by Electronic Media

Hearings conducted by electronic media shall occur only under the conditions set forth in Rule 12D-9.026, F.A.C.

* Hearings conducted by electronic media are subject to Board approval and the availability of the necessary equipment and procedures. See Rule 12D-9.026(1)(a), F.A.C.

* The special magistrate, if one is used, must agree in each case to the electronic hearing. See Rule 12D-9.026(1)(b), F.A.C.

* The Board must reasonably accommodate parties that have hardship or lack necessary equipment or ability to access equipment. See Rule 12D-9.026(1)(c), F.A.C.

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

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

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

Consistent with Board equipment and procedures:

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

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

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

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

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

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

Module 5:
Procedures After the Hearing

Training Module 5 addresses the following topics:

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

Learning Objectives

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

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

Procedures for Remanding Value Assessments to the Property Appraiser

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

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

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

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

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

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

1. Has concluded that a property classification will be granted; and

2. Has concluded that the record does not contain the competent substantial evidence necessary for the Board to establish classified use value.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When a petitioner does not notify the Board clerk that the results of the property appraiser's written remand review are unacceptable to the petitioner and does not request a continuation hearing, or if the petitioner waives a continuation hearing, the Board or special magistrate shall issue a decision or recommended decision. See Rule 12D-9.029(9)(b), F.A.C.

* 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

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

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

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

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

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

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

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

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

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

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

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

* Under Rule 12D-9.030(4), F.A.C., all recommended decisions of special magistrates, and all forms used for the recommended decisions, must contain the following required elements:

    1. Findings of fact;

    2. Conclusions of law; and

    3. Reasons for upholding or overturning the determination of the property appraiser.

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

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

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

Procedures for Consideration and Adoption of Recommended Decisions by Boards

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

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

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

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

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

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

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

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

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

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

1. The Board shall request the advice of Board legal counsel to evaluate further action and shall take the steps necessary for producing a final decision in compliance with law.

2. The Board may direct a special magistrate to produce a recommended decision that complies with the law based on, if necessary, a review of the entire record.

3. The Board shall retain any recommended decisions and all other records of actions taken under Rule 12D-9.031, F.A.C.

Procedures for Final Decisions by Boards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* Before using any form to notify petitioners of the final decision, the Board shall submit the proposed form to the Department for approval. See Rule 12D-9.032(5), F.A.C.

* The Board shall not use a form to notify the petitioner unless the Department has approved the form. See Rule 12D-9.032(5), F.A.C.

* Under Rule 12D-9.032(5), F.A.C., all decisions of the Board, and all forms used to produce final decisions on petitions heard by the Board, must contain the following required elements:

    1. Findings of fact;

    2. Conclusions of law; and

    3. Reasons for upholding or overturning the determination of the property appraiser.

If, prior to a final decision, any communication is received from a party concerning a Board process on a petition or concerning a recommended decision, a copy of the communication shall promptly be furnished to all parties, the Board clerk, and the Board legal counsel. See Rule 12D-9.032(6)(a), F.A.C.

* No such communication shall be furnished to the Board or a special magistrate unless a copy is immediately furnished to all parties. See Rule 12D-9.032(6)(a), F.A.C.

* A party may waive notification or furnishing of copies under Rule 12D-9.032(6)(a), F.A.C.

* The Board legal counsel shall respond to such communication and may advise the Board concerning any action the Board should take concerning the communication. See Rule 12D-9.032(6)(b), F.A.C.

* No reconsideration of a recommended decision shall take place until all parties have been furnished all communications and have been afforded adequate opportunity to respond. See Rule 12D-9.032(6)(c), F.A.C.

* Under Rule 12D-9.032(6)(d), F.A.C., the Board clerk shall provide to the parties:

    1. Notification before the presentation of the matter to the Board; and

    2. Notification of any action taken by the Board.

Further Judicial Proceedings

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

Note: Legislation enacted in 2023 amended section 194.036(1)(b), F.S., to increase the thresholds and variances for lawsuits. Under the amendments, if a property appraiser disagrees with the decision of the value adjustment board, the property appraiser may appeal to the circuit court if one or more of following variances are met: 20 percent variance from any assessment of $250,000 or less; 15 percent variance from any assessment in excess of $250,000 but not in excess of $1 million; 10 percent variance from any assessment in excess of $1 million but not in excess of $2.5 million; or 5 percent variance from any assessment in excess of $2.5 million. See Chapter 2023-157, Section 5, Laws of Florida (HB 7063), effective July 1, 2023.

Requirements for the Record of the Hearing

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

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

1. *The petition;*

2. *All filed documents, including all tangible exhibits and documentary evidence presented, whether or not admitted into evidence; and*

3. *Meeting minutes and a verbatim record of the hearing."*

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

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

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

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

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

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

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

3. If requested by one of the parties, these records shall be retained until the final disposition of any subsequent judicial proceeding related to the same property.

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;

7. All petitions were reviewed and considered as required by law unless withdrawn or settled as defined in Rule Chapter 12D-9, F.A.C.;

8. All decisions contain required findings of fact and conclusions of law in compliance with Chapter 194, F.S., and Rule Chapter 12D-9, F.A.C.;

9. The Board allowed opportunity for public comment at the meeting at which special magistrate recommended decisions were considered and adopted;

10. All Board members and the Board's legal counsel have read this certification and a copy of the statement in Rule 12D-9.037(1), F.A.C., is attached; and

11. All complaints of noncompliance with Part I, Chapter 194, F.S., or Rule Chapter 12D-9, F.A.C., that were called to the Board's attention have been appropriately addressed to conform with the provisions of Part I, Chapter 194, F.S., and Rule Chapter 12D-9, F.A.C.

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

* See Form DR-529, Notice Tax Impact of Value Adjustment Board.

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

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

Requirements for Public Notice of Findings and Results of the Board

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

* The format of the tax impact notice shall be substantially as prescribed in Form DR-529, Notice Tax Impact of Value Adjustment Board. See Rule 12D-9.038(1), F.A.C.

* The public notice shall be in the form of a newspaper advertisement and shall be referred to as the "tax impact notice." See Rule 12D-9.038(1), F.A.C.

* Such notice shall be published to permit filing within the timeframe in Rules 12D-17.004(1) and (2), F.A.C., where provided. See Rule 12D-9.038(1), F.A.C.

* For petitioned parcels, the property appraiser's initial roll shall be the property appraiser's determinations as presented at the commencement of the hearing or as reduced by the property appraiser during the hearing but before a decision by the Board or a recommended decision by a special magistrate. See Rule 12D-9.038(1), F.A.C.

* Rule 12D-9.038, F.A.C., shall not prevent the property appraiser from providing data to assist the Board clerk with the notice of tax impact.

The notice of the findings and results of the Board shall be published in a newspaper of paid general circulation within the county. See Rule 12D-9.038(3), F.A.C.

* It shall be the specific intent of the publication of notice to reach the largest segment of the total county population. See Rule 12D-9.038(3), F.A.C.

* Any newspaper of less than general circulation in the county shall not be considered for publication except to supplement notices published in a paper of general circulation. See Rule 12D-9.038(3), F.A.C.

Module 6:
Administrative Reviews of
Real Property Just Valuations

Training Module 6 addresses the following topics:

- Statutory Law Beginning in 2009 (See HB 521)
- Standard of Proof for Administrative Reviews
- Scope of Authority for Administrative Reviews
- Legal Limitations on Administrative Reviews
- The Florida Real Property Appraisal Guidelines
- 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

Learning Objectives

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

- Identify the 2009 changes enacted in statutory law (HB 521)
- Distinguish between who does appraisal development and who does NOT
- Identify legal provisions on the Florida Real Property Appraisal Guidelines
- Identify legal provisions that represent limitations on the discretion of property appraisers
- Recognize the four components of the definition of personal property
- Distinguish between appraisal development and administrative reviews
- Identify the effective date of administrative review and the real property interest to be reviewed
- Recognize and apply the scope of authority for administrative reviews

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

Statutory Law Beginning in 2009 (See HB 521)

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

The complete text of this legislation is presented following:

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 accepted appraisal practices. If the record lacks such evidence, the matter must be remanded to the property appraiser with appropriate directions from the value adjustment board or the court, and the property appraiser must comply with those directions.

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

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

Section 2.

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

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

Section 3.

This act shall take effect upon becoming a law and shall first apply to assessments in 2009.
Approved by the Governor June 4, 2009.
Filed in Office Secretary of State June 4, 2009.
Ch. 2009-121 LAWS OF FLORIDA Ch. 2009-121

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

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

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

This 2009 legislation lowered the standard of proof for assessment challenges, greatly increased the level of diligence for developing and reporting just valuations, and added the following four new determinative standards for developing, reporting, and reviewing just valuations:1) compliance with professionally accepted appraisal practices; 2) avoidance of arbitrarily different appraisal practices within groups of comparable property within the same county; 3) avoidance of superseded case law; and 4) correct application of an appropriate appraisal methodology. These changes are explained in a following section titled "The Seven Overarching Standards for Valid Just Valuations."

The law now provides a lower standard of proof, called "preponderance of the evidence," for determining whether the assessment is incorrect.

* "Preponderance of the evidence" is a standard (level) of proof that means "greater weight of the evidence" or "more likely than not."

In determining whether the assessment is incorrect, Boards and special magistrates must not use any standard of proof other than the preponderance of the evidence standard, as provided in Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

Higher standards of proof no longer apply. The higher standard of proof called "clear and convincing evidence" no longer applies in the administrative review of assessments and must not be used by Boards or special magistrates. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

"It is the express intent of the Legislature that a taxpayer shall never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment." See Subsection 194.3015(1), F.S., as created by Chapter 2009-121, Laws of Florida (House Bill 521).

Standard of Proof for Administrative Reviews

In administrative reviews, Boards or special magistrates must consider admitted evidence and then compare the weight of the evidence to a "standard of proof" to make a determination on an issue under review.

Generally, the term "evidence" means something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of a disputed fact. See *Black's Law Dictionary, Eighth Edition*, page 595.

"Standard of proof" means the level of proof needed by the Board or special magistrate to reach a particular conclusion. See Rule 12D-9.027(5), F.A.C.

The standard of proof that applies in administrative reviews is called "preponderance of the evidence," which means "greater weight of the evidence." See Rule 12D-9.027(5), F.A.C.

Also, the Florida Supreme Court has defined "preponderance of the evidence" as "greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So.2d 276 (Fla. 2000).

"Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in the case. See Florida Standard Civil Jury Instructions, approved for publication by the Florida Supreme Court.

The Board or special magistrate must determine whether the admitted evidence is sufficiently relevant and credible to reach the "preponderance of the evidence" standard of proof.

This standard of proof is the scale by which the Board or special magistrate measures the weight (relevance and credibility) of the admitted evidence in making a determination.

Scope of Authority for Administrative Reviews

The administrative review of just valuations is performed by Boards or special magistrates under Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10, and 12D-16, F.A.C.; and other provisions of Florida law.

The administrative review process performed by Boards and special magistrates is separate and different from the mass appraisal development process performed by property appraisers.

In administrative reviews, Boards and special magistrates are not authorized to perform appraisal development and must not perform appraisal development.

In administrative reviews, Boards and special magistrates are not authorized to perform any independent factual research into attributes of the subject property or any other property.

Boards and special magistrates must follow the provisions of law on the administrative review of assessments. See Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10, and 12D-16, F.A.C.; and other provisions of Florida law.

In establishing revised just values when required by law, Boards and special magistrates are bound by the same standards and practices as property appraisers. See Rule 12D-10.003(1), F.A.C., treated favorably in Bystrom v. Equitable Life Assurance Society, 416 So.2d 1133 (Fla. 3d DCA 1982), and see Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

* However, when observing this requirement, Boards and special magistrates must act within their scope of authority.

The effective date of administrative review is January 1 each year, and the real property interest to be reviewed is the unencumbered fee simple estate.

The Board or special magistrate has no authority to develop original just valuations of property and may not take the place of the property appraiser, but shall revise the assessment when required under Florida law. See Rule 12D-10.003(1), F.A.C., and Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

* See Simpson v. Merrill, 234 So.2d 350 (Fla. 1970), stating that a court may not take the place of the property appraiser but may reduce the assessment.

* Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding that the determination of the weight to be accorded evidence rests upon the trial judge, as trier of facts, and if competent substantial evidence is introduced demonstrating the assessment to be erroneous, the judge may reduce that assessment.

The Board or special magistrate is required to revise the assessment under the conditions specified in Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). These conditions are described in detail later in this module.

"In establishing a revised just value, the board or special magistrate is not restricted to any specific value offered by one of the parties." See Rule 12D-9.027(2)(b)3.a., F.A.C.

* Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding that the reviewing judge could arrive at a value that was different from either of the values presented by the parties when the judge's value was based on competent substantial evidence in the record.

The Board or special magistrate is authorized to make calculations and to make an adjustment to the property appraiser's value based on competent substantial evidence of just value in the record. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977), stating that when the record contains competent substantial evidence of value the court may make necessary value calculations or adjustments based on such evidence.

If the hearing record does not contain competent substantial evidence of just value, the Board or special magistrate cannot substitute its own independent judgment. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977), stating that in the absence of competent substantial evidence of value the court cannot substitute its own independent judgment.

The Board or special magistrate has no authority to adjust assessments across-the-board. Their authority to review just valuations is limited to the review of individual petitions filed. See Spooner v. Askew, 345 So.2d 1055 (Fla. 1976).

The Board has the limited function of reviewing and correcting individual assessments developed by the property appraiser. See Bath Club, Inc. v. Dade County, 394 So.2d 110 (Fla. 1981).

The Board has no authority to review, on its own volition, a decision of the property appraiser to deny an exemption. See Redford v. Department of Revenue, 478 So.2d 808 (Fla. 1985).

"For the purposes of review of a petition, the board may consider assessments among comparable properties within homogeneous areas or neighborhoods." See Subsection 194.034(5), F.S.

In administrative reviews, Boards and special magistrates are not authorized to consider any evidence except evidence properly presented by the parties and properly admitted into the record for consideration. See Rule 12D-9.025(4)(a), F.A.C.

In addition to admitted evidence, Boards and special magistrates are authorized to consider only the following items in administrative reviews:

1. Legal advice from the Board legal counsel;

2. Information contained or referenced in the Department's Uniform Policies and Procedures Manual and Accompanying Documents;

3. Information contained or referenced in the Department's training for value adjustment boards and special magistrates; and

4. Professional texts that pertain only to professionally accepted appraisal practices that are not inconsistent with Florida law.

Legal Limitations on Administrative Reviews

No evidence shall be considered by the Board or special magistrate except when presented during the time scheduled for the petitioner's hearing or at a time when the petitioner has been given reasonable notice. See Subsection 194.034(1)(g), F.S. Also, see Rule 12D-9.025(4)(a), F.A.C.

Other provisions of law address the responsibilities of petitioners and property appraisers that may affect the review and consideration of evidence at a hearing.

* The Board or special magistrate must consult with the Board legal counsel on any questions about the review and consideration of evidence.

In administrative reviews, the Board or special magistrate shall not consider the tax consequences of the valuation of a specific property. See Rule 12D-10.003(1), F.A.C.

The Board or special magistrate has no power to grant relief by adjusting the value of a property on the basis of hardship of a particular taxpayer. See Rule 12D-10.003(1), F.A.C.

A just valuation challenge must stand or fall on its own validity, unconnected with the just value of any prior or subsequent year. See Keith Investments, Inc. v. James, 220 So.2d 695 (Fla. 4th DCA 1969); Also, see Dade County v. Tropical Park, Inc., 251 So.2d 551 (Fla. 3rd DCA 1971).

The prior year's just value is not competent evidence of just value in the current year, even when there is no evidence showing a change in circumstances between the two dates of assessment. See Simpson v. Merrill, 234 So.2d 350 (Fla. 1970).

An appraisal report shall not be submitted as evidence in a value adjustment board proceeding in any tax year in which the person who performed the appraisal serves as a special magistrate to that county value adjustment board for the same tax year. Accordingly, in that tax year the board and any special magistrate in that county shall not admit such appraisal report into evidence and shall not consider any such appraisal report. See Rule 12D-9.025(4)(g), F.A.C.

The Florida Real Property Appraisal Guidelines

Below are provisions from Section 195.032, Florida Statutes, describing the Florida Real Property Appraisal Guidelines.

1. *"The standard measures of value shall provide guidelines for the valuation of property and methods for property appraisers to employ in arriving at the just valuation of particular types of property consistent with section 193.011..."*

2. *"The standard measures of value shall assist the property appraiser in the valuation of property and be deemed prima facie correct, but shall not be deemed to establish the just value of any property."*

See Rule 12D-51.003, Florida Administrative Code, for more information on the Florida Real Property Appraisal Guidelines.

NOTICE:
The Florida Real Property Appraisal Guidelines are Out-of-Date

The Florida Real Property Appraisal Guidelines, developed under sections 195.002, 195.032, and 195.062, F.S., were last revised in 2002 and are now out-of-date due to changes in law. The 2002 guidelines do NOT reflect the impacts of the landmark 2009 enactments in sections 194.301 and 194.3015. Pertinent to the guidelines, the 2009 legislation greatly increased the level of diligence required for developing and reporting just valuations and also established four additional, determinative standards for developing, reporting, and reviewing just valuations. These four additional standards are: 1) compliance with professionally accepted appraisal practices; 2) avoidance of arbitrarily different appraisal practices within groups of comparable property within the same county; 3) avoidance of superseded case law; and 4) correct application of an appropriate appraisal methodology. The 2002 real property appraisal guidelines cannot be used as any sort of standard for the property appraiser's development and reporting of just valuations or for the VAB's review of just valuations. Rather, the current determinative legal standards to be used for just valuation development, reporting, and review are listed under the seven overarching standards for valid just valuations presented below herein. Such standards reflect the 2009 enactments involving sections 194.301, 193.011, and 194.3015, F.S.

More information on these 2009 enactments is presented in a following section titled "The Seven Overarching Standards for Valid Just Valuations."

A copy of the 2002 real property guidelines is available at:
http://floridarevenue.com/property/Documents/FLrpg.pdf

The Eight Factors of Just Valuation in Section 193.011, F.S.

After the landmark 2009 legislation, the eight just valuation factors in section 193.011 are now incorporated into section 194.301 in three places and must be applied together with the other just valuation standards in sections 194.301 and 194.3015, F.S., and in other applicable law, so that each standard is given lawful meaning.

Section 193.011, Florida Statutes, provides the following on just valuation.

***"Factors to consider in deriving just valuation**. – In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:*

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

(6) The condition of said property;

(7) The income from said property; and

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or a typical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property."

Section 193.011 is now part of the determinative just valuation standards provided in sections 194.301 and 194.3015 and in other applicable law, as explained in the next section titled "The Seven Overarching Standards for Valid Just Valuations."

The Seven Overarching Standards for Valid Just Valuations

The 2009 statutory changes in sections 194.301 and 194.3015, F.S., greatly increased the standard of care (level of expertise and diligence) for the county appraiser's development and reporting of just valuations for ad valorem taxation in Florida.

The 2009 changes also established four additional, determinative statutory standards for valid just valuations, as follows: 1) compliance with professionally accepted appraisal practices, 2) avoidance of arbitrarily different appraisal practices within groups of comparable property within the same county, 3) avoidance of superseded case law, and 4) correct application of an appropriate appraisal methodology.

Under Florida's current legal framework for just valuations, there are seven overarching standards for valid just valuations. These seven standards must be read and applied together, so that each is given appropriate and lawful meaning in light of the facts.

Compliance with these seven standards requires the appraiser to correctly apply the appraisal process and "…*this important function requires expertise, diligence, sound judgment, and objectivity*..." See *Uniform Appraisal Standards for Federal Land Acquisition 2016* (Appraisal Foundation), page 203.

These seven overarching standards are listed and described below.

1. **Compliance with Professionally Accepted Appraisal Practices for Appraisal Development and Appraisal Reporting**

The section 194.301 standard of professionally accepted appraisal practices applies to the entire appraisal process that includes both appraisal development and appraisal reporting, each of which are addressed separately below.

Professionally accepted appraisal practices require appraisers to recognize and comply with current laws and regulations that apply to the appraiser or to the appraisal

assignment. See Competency Rule, *Uniform Standards of Professional Appraisal Practice, 2024 ~~2020-2021~~ Edition* (USPAP), page 13. ~~11.~~

Compliance with professionally accepted appraisal practices encompasses compliance with all other law comprising the seven overarching standards.

Professionally accepted appraisal practices comprise a voluminous set of practices set forth in thousands of pages of professional appraisal references. The current edition of USPAP is a set of standards consisting of 62 ~~58~~ pages that address both appraisal development and appraisal reporting ~~review~~ for all types of property.

Thus, the two are not the same thing because the professionally accepted appraisal practices standard is much more extensive and detailed than USPAP.

While USPAP is an indispensable (but not exhaustive) ~~a useful~~ source of information on professionally accepted appraisal practices (including appraisal development and appraisal reporting), USPAP is not a substitute for Florida's statutory standards for valid just valuations.~~, it not a substitute for such practices.~~

Key Elements of Appraisal Development Under Professionally Accepted Appraisal Practices

In the context of Florida ad valorem tax law, appraisal development is the act, by an appraiser, of applying the appraisal process to arrive at valid just valuations.

~~"Relevant characteristics" is a core appraisal term defined as: "*features that may affect a property's value or marketability such as legal, economic, or physical characteristics*." See Definitions, *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition* (Washington, DC: The Appraisal Foundation), page 5.~~

Under professionally accepted appraisal practices, the three categories of appraisal data that must be applied in the appraisal process are: legal, physical, and economic. See Standard 5, Mass Appraisal Development, *Uniform Standards of Professional Appraisal Practice, 2024 ~~2020-2021~~ Edition*, pages 36-37. ~~33.~~ Also, see section 193.1142(1)(c)2., F.S.

Appraisers are required *"to use due diligence and due care*." See Competency Rule, *Uniform Standards of Professional Appraisal Practice, 2024 ~~2020-2021~~ Edition*, page 13. ~~11.~~

An appraiser's valuation must be "*based on careful scrutiny of all the data available*." See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007).

Appraisers have the "…*responsibility to obtain knowledge of all pertinent facts and circumstances that can be acquired with diligent inquiry and search.*" See *Uniform Appraisal Standards for Federal Land Acquisition 2016* (Appraisal Foundation), page 204.

"*The appraiser must be diligent in data collection and competently apply the accepted methods and techniques of the appraisal profession*…" See *Uniform Appraisal Standards for Federal Land Acquisition 2016* (Appraisal Foundation), page 203.

For appraisal evidence to support a just valuation, the evidence must be relevant to the subject property and must satisfy each of the just valuation standards provided in law.

The three approaches to just valuation are: 1) the cost less depreciation approach, 2) the sales comparison approach, and 3) the income capitalization approach.

- Each of the three approaches has variants, depending on: 1) the legal, physical, and economic attributes of the subject property; 2) the availability of appraisal data; and 3) the appropriate appraisal methodology.

Generally, property appraisers use mass appraisal techniques to develop just valuations each year, but property appraisers may also use single-property appraisal techniques.

When properly applied in compliance with all requirements of law, both mass appraisal and single-property appraisal are professionally accepted appraisal practices.

It is implicit in mass appraisal that, even when properly specified and calibrated mass appraisal models are used, some individual value conclusions will not meet standards of reasonableness, consistency, and accuracy. See Standard 5, Mass Appraisal Development, *Uniform Standards of Professional Appraisal Practice, 2024 ~~2020-2021~~ Edition*, page 40. ~~37.~~

Regardless of the appraisal approach or technique used to develop a particular just value, the approach, technique, and value are subject to review to determine whether the appraisal process complies with all applicable legal standards.

Summarized below are some key elements of the standard of care (level of expertise and diligence) for development of just valuations for Florida ad valorem tax purposes:

- Identify the legal, physical, and economic attributes of the subject property
- Identify and comply with all applicable law, and avoid superseded case law
- Determine the required data, research, and analysis, and identify the professionally accepted appraisal practices and an appropriate appraisal methodology
- Collect, analyze, and maintain legal, physical, and economic data as necessary for credible valuations that comply with applicable law
- Apply due diligence and due care in the appraisal process, avoid carelessness and negligence, and avoid significant errors of commission and omission

- Comply with each of the 193.011 factors consistent with all other just valuation standards (avoid cursory consideration of 193.011 factors, correctly apply the factors needed for a credible and lawful just valuation, and develop professionally accepted reasons for not applying any factor not applied)

- Avoid appraisal practices that are arbitrarily different from the appraisal practices applied to other comparable property in the same county

- Correctly apply an appropriate appraisal methodology that complies with professionally accepted appraisal practices and each of the other legal standards

- Reconcile data and analyses used, and correctly employ quality review procedures

Key Elements of Appraisal Reporting Under Professionally Accepted Appraisal Practices

Professionally accepted appraisal practices require communicating, or reporting, the appraisal process used to develop the just valuation. An appraisal report is any communication, written or oral, about the appraisal process applied in just valuations.

Appraisal reporting is part of the appraisal process and is how the appraiser demonstrates compliance with each of the just valuation standards provided by law.

Conclusory statements made by an appraiser reporting an appraisal process are not sufficient and are not credible. See Scripps Howard Cable Co. v. Havill, 665 So.2d 1071, 1077 (Fla. 5th DCA 1995), approved, 742 So.2d 210 (Fla. 1998).

The text, *Fundamentals of Mass Appraisal*, published in 2011 by the International Association of Assessing Officers, pages 4-5, lists appraisal reporting as part of the appraisal process and then states in pertinent part:

"Professional standards, however, require all appraisers to work systematically, document their work, communicate their opinions of value clearly, and behave ethically."

The text, *The Appraisal of Real Estate, Fifteenth Edition*, published in 2020 by the Appraisal Institute, pages 31 and 37, lists appraisal reporting as part of the appraisal process and then states in part as follows:

"The report of the value opinion or conclusion addresses the data analyzed, the methods applied, and the reasoning that led to the value conclusion and does so in a manner that enables the intended users to properly understand the appraiser's findings and conclusions. The objective of the appraisal report is to communicate the valuation process with sufficient supporting evidence and logic to ensure that the assignment results are credible for the intended use."

Standard 6, Mass Appraisal Reporting, *Uniform Standards of Professional Appraisal Practice, 2024 ~~2020-2021~~ Edition*, page 42, ~~39,~~ requires appraisers to explain the exclusion of any of the three approaches to value and to:

"*provide sufficient information to enable the client and intended users to have confidence that the process and procedures used conform to accepted methods and result in credible value conclusions;*"

A recent trial court judgment states as follows regarding appraisal reporting:

"*The 2009 legislation requires the Court to determine whether the appraiser used an appropriate methodology in making the assessment. To allow the Court to make this determination, the property appraiser must present sufficient evidence that describes the appraisal methodology and explains how and why it was applied in valuing the Subject Property. Under section 194.301(1), the appraiser has the burden of going forward and presenting testimonial and documentary evidence explaining how the appraiser satisfied each of the just valuation criteria*."
See Dillards, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).

Summarized below are some key elements of the standard of care (level of expertise and diligence) for just valuation reporting:

- Must provide meaningful disclosure of procedures applied in the appraisal process
- Must be relevant to the legal, physical, and economic attributes of the property, each of the applicable legal criteria, and the appraisal process
- Must be credible in the context of Florida ad valorem property tax appraisal
- Must be clear and accurate to enable intended users to understand the appraisal process
- Must include explanations and reasons, addressing each of the valuation approaches and each of the applicable legal criteria, regarding what was actually done and how and why, in developing the just value
- Must provide lawful and professionally accepted explanations and reasons for not applying a legal criterion or not applying an appraisal approach
- Must be sufficient for intended users to understand how and why the just value was developed via the methodology used
- Must avoid misleading statements, conclusory statements, and superseded case law

2. Compliance with Each of the Just Valuation Factors in Section 193.011, F.S.

After the landmark 2009 legislation, the eight just valuation factors in section 193.011 are now incorporated into section 194.301 in three places.

- These eight just valuation factors must now be applied together with the other just valuation standards in sections 194.301 and 194.3015, F.S., and in other applicable law, so that each standard is given professionally accepted and lawful meaning.

- The method of just valuation and the weight to be given to each of the section 193.011 factors is now governed solely by: 1) the legal, physical, and economic characteristics of the subject property; 2) the four additional determinative standards in sections 194.301 and 194.3015, F.S.; and 3) all other applicable law.

- In just valuations under current law, it is necessary to actually apply the section 193.011 factors that are appropriate for compliance with the four new determinative standards in sections 194.301 and 194.3015 and all other applicable law.

- Under the dictates of section 194.301 and 194.3015, F.S., for any section 193.011 factor not applied in a particular just valuation, the appraiser must report a clear, logical, fact-based, and professionally accepted reason for excluding the factor.

Pre-2009 just valuation case law is replete with obsolete statements indicating a much lower level of expertise and diligence (standard of care) for developing and reporting just valuations than required by current law, and these obsolete statements must be avoided.

Just valuation evidence, including evidence intended to show the property appraiser's compliance with each of the section 193.011 factors, "*must be real, material, pertinent, and relevant evidence, as opposed to ethereal, metaphysical, speculative, theoretical, or hypothetical, and it must have definite probative value*." See Singh v. Walt Disney Parks, --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).

The legal, physical, and economic characteristics of the subject property must be reflected in the appraisal data applied for the eight factors in section 193.011 and must be applied in all just valuation approaches.

The appraiser's compliance with legal standards, including the just valuation factors in section 193.011, must be demonstrated in the appraisal data, analyses, practices, and methods used to develop and report just valuations.

Appraisal approaches (methods), the application of legal standards including the section 193.011 factors, and the validity of resulting values are interconnected and cannot logically be separated.

In administrative reviews, the overarching legal standards should be applied in determining whether the appraisal methodology used in making a value

assessment is appropriate under the circumstances and this, in turn, should be applied in determining whether the value assessment is valid.

Below are two examples of how court decisions have correctly applied the section 193.011 factors in reviewing appraisal methodology and resulting just valuations.

- 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:

"*The reliability of sales ratio statistics depends on unsold parcels being appraised in the same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio results, possibly rendering them useless. Equally important, selective reappraisal of sold parcels ("sales chasing") is a serious violation of basic appraisal uniformity and is highly unprofessiona*l."

Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).

4. Avoidance of Superseded Case Law.

In 2009, the Florida Legislature made crystal clear its intent to supersede case law that is inconsistent with legislative enactments in sections 194.301 and 194.3015, F.S.

The 2009 enactments re-engineered the development, reporting, and review of just valuations in Florida. Yet, in some cases, these major statutory changes have not been applied in practice and this continues to be a serious problem.

Pre-2009 case law, as well as some post-2009 legal arguments based on obsolete pre-2009 case law, do NOT reflect the major statutory changes enacted in 2009.

For public trust to exist in the VAB process, VABs, VAB attorneys, and special magistrates must understand and act in accordance with this landmark legislation and must be diligent in avoiding the use of obsolete case law in the VAB process.

The last sentence in subsection 194.301(1), F.S., now states: "*The provisions of this subsection preempt any prior case law that is inconsistent with this subsection*."

Further, section 194.3015, F.S., now states in its entirety:

"*(1) It is the express intent of the Legislature that a taxpayer shall never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment. All cases establishing the every-reasonable-hypothesis standard were expressly rejected by the Legislature on the adoption of chapter 97-85, Laws of Florida. It is the further intent of the Legislature that any cases published since 1997 citing the every-reasonable-hypothesis standard are expressly rejected to the extent that they are interpretive of legislative intent*."

"*(2) This section is intended to clarify existing law and apply retroactively*."

In 1997, the Florida Legislature, in an attempt to implement fairness for property taxpayers, enacted the original version of section 194.301, F.S., stating in pertinent part:

"*In no case shall the taxpayer have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment*."

In the 1996 to 1998 period, multiple law articles addressed issues in the assessment appeal process and legislative efforts to address fairness for property taxpayers.

In 2001, despite the 1997 enactment of section 194.301, F.S., in Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the court issued a decision that actually applied the "*reasonable hypothesis*" standard, stating:

"*Because there are so many well-recognized approaches for arriving at an appraisal, the appraiser's decision may be overturned only if there is no reasonable hypothesis to support it.*"

In 2002, again despite the 1997 enactment of section 194.301, in Mazourek v. Wal-Mart, 831 So. 2d 85, 91 (Fla. 2002), the court extended the error by quoting the 2001 decision in Wal-Mart v. Todora, likewise stating:

"*Because there are so many well-recognized approaches for arriving at an appraisal, the appraiser's decision may be overturned only if there is no reasonable hypothesis to support it.*"

In 2006, the decision from In re Litestream Technologies, LLC, 337 B.R. 705, 710 (Bkrtcy. M.D. Fla. 2006) further extended the same error by quoting from Mazourek, instead of following the Legislature's 1997 directive in section 194.301, F.S.

Then, in 2009, the Florida Legislature completely amended section 194.301 and created section 194.3015, addressing in both the problem of superseded case law.

In 2013 in CVS EGL Fruitville Sarasota FL, LLC and Holiday CVS, LLC. v. Todora, 124 So. 3d 289 (Fla. 2d DCA 2013), the Second District Court of Appeal admitted the error it made in the aforementioned 2001 case of Wal-Mart v. Todora, and explained how this error was extended when the Florida Supreme Court quoted the error in its aforementioned 2002 decision in Mazourek v. Wal-Mart.

Also, in CVS EGL, the Second District Court explained an example of the legislative intent behind the 2009 enactments in sections194.301 and 194.3015, stating:

"*Because the legislature rejected the application of "any cases published since 1997 citing the every-reasonable-hypothesis standard," it follows that the legislature intended to supersede Todora and* Mazourek*. We must therefore give deference to the legislature and conclude that Todora and Mazourek are not controlling*."

In July 2016, the difficulty with applying sections 194.301 and 194.3015 appeared in a final judgment (Singh v. Darden Restaurants, Inc.) where the trial court erred because it failed to apply standards in sections 194.301 and 194.3015, and instead applied obsolete case law standards based on assessment "*discretion*."

Then, in Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019), the Fifth District Court overturned the July 2016 trial judgment and explained how the trial judgment erroneously applied pre-2009 case law, stating in pertinent part:

"…*in its final judgment, the trial court cited to language from Mazourek v. Wal-Mart Stores, Inc., 831 So. 2d 85, 89 (Fla. 2002), that "[t]he property appraiser's determination of assessment value is an exercise of administrative discretion within the officer's field of expertise." The Mazourek decision preceded the 2009 amendment to section 194.301, Florida Statutes, where the Legislature articulated that the value of property must be determined by an appraisal methodology that met the criteria of section 193.011 and professionally accepted appraisal practices*."

Other Examples of Superseded Case Law

The holdings in some court decisions based on the legislatively rejected "*reasonable hypothesis*" standard show an interconnection between such standard and the obsolete concomitant (attendant) standards that also appeared in such holdings.

For example, in CVS EGL (2013), the court rejected the concomitant standard of "*within the range of reasonable appraisals*" because of its interconnection with the legislatively rejected "*reasonable hypothesis*" standard.

Eight examples of superseded case law are listed and described below.

None of these superseded standards is harmless because they unequivocally reflect a lower standard of care (level of expertise and diligence) for developing, reporting, and reviewing just values than the standards required by current law in sections 194.301 and 194.3015.

VABs, VAB attorneys, and special magistrates must be diligent to avoid using any of these types of superseded standards and to reject any arguments espousing them.

Superseded Concomitant Standard No. 1:

"*the core issue in any action challenging a tax assessment is the amount of the assessment, not the methodology utilized in arriving at the valuation*"

In Bystrom v. Whitman, 488 So. 2d 520, 521 (Fla. 1986), the court applied this obsolete standard together with the rejected "*reasonable hypothesis*" standard.

In 2007 in CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007), the U.S. Supreme Court emphasized the necessity of reviewing appraisal methodology in valuations disputes, stating: "*We do not see how a court can go about determining true market value if it may not look behind the State's choice of valuation methods*."

In 2009, the Legislature enacted four new determinative just valuation standards, each providing methodological requirements for developing and reviewing just valuations.

Superseded Concomitant Standard No. 2:
"*within the range of reasonable appraisals*"

In Blake v. Xerox, 447 So. 2d 1348 (Fla. 1984), the court equated this obsolete concomitant standard with the "*reasonable hypothesis*" standard, stating:

"*Regardless of which method was theoretically superior, the trial court was bound to uphold the appraiser's determination if it was lawfully arrived at and within the range of reasonable appraisals, that is, if it was supported by any reasonable hypothesis of legality*."

In CVS EGL (2013), the court applied section 194.3015 in overturning a trial judgment that had used the legislatively rejected "*reasonable hypothesis*" standard and its concomitant standard of "*within the range of reasonable appraisals,*" stating:

"*At no point during the trial court's application of these standards should it consider whether the assessment is within the range of reasonable appraisals or whether it is supported by any reasonable hypothesis of legality."*

Superseded Concomitant Standard No. 3:
"[t]*he property appraiser's determination of assessment value was an exercise of administrative discretion within the officer's field of expertise*"

In Blake v. Xerox, 447 So. 2d 1348, 1350 (Fla. 1984), the decision linked this old standard with the legislatively rejected "*reasonable hypothesis*" standard.

This obsolete statement runs afoul of diligence requirements in the current standards of professionally accepted appraisal practices and appropriate appraisal methodologies.

In Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019), the court recognized this concomitant standard as being obsolete since 2009.

Superseded Concomitant Standard No. 4:
"*the method of valuation and the weight to be given each factor is left to the appraiser's discretion*"

In Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the holding linked this obsolete standard with the legislatively rejected "*reasonable hypothesis*" standard and with the superseded "*within the range of reasonable appraisals*" standard.

In its 2007 decision in CSX, the U.S. Supreme Court emphasized the necessity of reviewing appraisal methodology in ad valorem tax valuation disputes, stating: "*We do not see how a court can go about determining true market value if it may not look behind the State's choice of valuation methods*."

In 2009, the Legislature enacted four new determinative just valuation standards, each providing methodological requirements for developing and reviewing just valuations.

The valuation method and the weight actually given to each section 193.011 factor can be proven only by the actual application and reporting of an appropriate appraisal process that complies with all applicable law and results in a valid just valuation.

Thus, under current law, the valuation method and the weight given to each section 193.011 factor are governed solely by the legal, physical, and economic characteristics of the subject property and by the appropriate application of all just valuation standards in sections 194.301 and 194.3015 and all other applicable law.

Superseded Concomitant Standard No. 5:

"*The determination of just value inherently and necessarily requires the exercise of appraisal judgment and broad discretion by Florida property appraisers*."

In Fla. Department of Revenue v. Howard, 916 So. 2d 640 (Fla. 2005), the decision references the two preceding obsolete statements based on "*discretion*," along with this third variant of the obsolete "*discretion*" standard.

This "*discretion*" variant was based on decades-old legal concepts from a time when the now legislatively rejected *"reasonable hypotheses*" standard held sway.

Notably, the term "*discretion*" does not appear in the 2024 ~~2020-2021~~ edition of the Uniform Standards of Professional Appraisal Practice and, likewise, does not appear in the widely cited appraisal text, *The Appraisal of Real Estate, 15th Edition*, published in 2020 by the Appraisal Institute.

Regarding "*appraisal judgment*," key excerpts from the *Uniform Appraisal Standards for Federal Land Acquisition 2016*, published by the Appraisal Foundation, pages 203-204, describe the diligent application of sound appraisal judgment in the appraisal process:

"*Serving this important function requires expertise, diligence, sound judgment, and objectivity*..."

"*The appraiser must be diligent in data collection and competently apply the accepted methods and techniques of the appraisal profession*…"

"*Appraisers must exercise sound judgment based on known pertinent facts and circumstances, and it is their responsibility to obtain knowledge of all pertinent facts and circumstances that can be acquired with diligent inquiry and search. They must then weigh and consider the relevant facts, exercise sound judgment, and develop an opinion that is completely unbiased by any consideration favoring either the landowner or the government*."

Thus, appraisal judgment is NOT a substitute for appraisal expertise, diligence, or objectivity. For valid just valuations, appraisal judgment must be sound and must be applied in compliance with the seven overarching standards for valid just valuations.

Superseded Concomitant Standard No. 6:

"*Appraisal is an art, not a science*"

In 1969 in Powell v. Kelly 223 So. 2d 305 (Fla. 1969), court applied this obsolete standard along with the legislatively rejected "*reasonable hypothesis*" standard.

In its 2007 decision on ad valorem appraisal methodology, the U.S. Supreme Court held that appraisal is an "*applied science*." See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007), 552 U.S. 9 (2007).

On appraisal being a science, Appendix A of the widely cited textbook*, The Appraisal of Real Estate, 15th Edition*, published in 2020 by the Appraisal Institute, states:

"*Professional appraisal practice applies the scientific processes of economic analyses (i.e., the valuation process) to develop conclusions in an impartial, objective manner, without bias or any desire on the part of appraisers to accommodate their own interests or the interests of their clients. To form sound conclusions, appraisers avoid personal beliefs or biases and search for market evidence to support their appraisal opinions. It is this level of independence and freedom from either personal views or personal financial gain, and strict adherence to the scientific principles contained in the valuation process, that separate the profession of appraisal from other fields that also deal with real estate values.*"

Superseded Concomitant Standard No. 7:

"*Because there are so many well-recognized approaches for arriving at an appraisal*…"

In Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the Second District Court ignored section 194.301 and applied this obsolete concomitant standard together with the now legislatively rejected "*reasonable hypothesis*" standard, stating:

"*Because there are so many well-recognized approaches for arriving at an appraisal, the appraiser's decision may be overturned only if there is no reasonable hypothesis to support it*."

Then, in CVS EGL (2013), the Second District Court admitted its 2001 error in Wal-Mart v. Todora and applied section 194.3015 in overturning a May 2012 trial judgment that had erroneously applied these superseded standards.

Superseded Concomitant Standard No. 8:

"*an appraiser may reach a correct result for the wrong reason*"

In City National Bank v. Blake, 257 So. 2d 264 (Fla. 3d DCA 1972), the court equated this concomitant standard with the now legislatively rejected every "*reasonable hypothesis*" standard, stating:

"*A tax assessment is presumed correct, and in order to successfully challenge it, the taxpayer must present proof which excludes every reasonable hypothesis of a legal assessment. That is, an assessor may reach a correct result for the wrong reason*."

This old standard was rendered obsolete by the U.S. Supreme Court's 2007 decision in CSX and by Florida's enactments in sections 194.301 and 194.3015, F.S.

Superseded Concomitant Standard No. 9:

A value assessment challenge on equitable grounds must allege and prove discrimination relative to "*all*" or *"substantially all"* other property in the county.

The 1976 decision in Deltona Corp. v. Bailey, 336 So.2d 1163, 1167 (Fla. 1976) rejected an equal protection challenge, stating in pertinent part:

"… *a reading of Count II in its entirety indicates that an essential element is missing. Deltona fails to allege that all (or even substantially all) other property in the county is systematically assessed at a value less than the assessment of Deltona's property. When speaking of the general level of assessments in the county the amended complaint avers that Deltona's property is assessed at a level higher than the general level of assessment for similar properties in Volusia County, Florida. Since Deltona failed to plead that it is being "singled out" and specifically discriminated against vis-a-vis the other taxpayers generally in Volusia County, it has no standing to challenge its assessment on equal protection grounds*…"

Thus, Deltona rejected an equal protection claim that was based on the comparative standard of "*similar properties*" within the county and, instead, applied a much more stringent comparative standard of "*all*" or "*substantially all*" other property in the county.

The use of the Deltona decision in post-2009 VAB proceedings is erroneous and must be avoided because Deltona has been superseded by both the U.S. Supreme Court and by the Florida Legislature on the core issue of delineating the comparative property group for comparison to subject assessments.

In 1980, the Florida Legislature enacted the following provision, which is now placed in Section 194.034(5), F.S.:

"*For the purposes of review of a petition, the board may consider assessments among comparable properties within homogeneous areas or neighborhoods*."

This statute delineates the comparable property group much more narrowly ("*within homogeneous areas or neighborhoods*") than the obsolete Deltona standard of "*all"* or *"substantially all*" other property in the county. Clearly, section 194.034(5), F.S., superseded Deltona's obsolete comparative standard.

Further, in 1989 in Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster Cty., 488 U. S. 336 (1989), the U.S Supreme Court found in favor of a taxpayer's claims of disparate treatment and used the following phrases to delineate the comparative property group for application in an equal protection review: "*similarly situated property*," "*generally comparable property*" "*comparable neighboring property*," and "*comparable property in the county*."

Then, in 1991 in Ozier v. Seminole County Property Appraiser 585 So.2d 357, 359 (Fla. 5th DCA 1991), the Fifth District Court rejected argument from a county property appraiser who urged the Court to apply Deltona and deny standing for a taxpayer to challenge the assessment on constitutional grounds.

- Notably, the Ozie*r* court held that Deltona "*must give way to*" Allegheny.

And, finally, in 2009 the Florida Legislature enacted a new determinative, comparative standard in section 194.301(2)(a)3., F.S., which provides for a just value assessment to be deemed invalid upon a finding by a VAB or court that the assessment 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*."

Thus, Florida's current statutory comparative standard of "*comparable property within the same county*" aligns perfectly with the U.S. Supreme Court's comparative property standard in Allegheny.

Without any doubt, the holding in Deltona has been superseded by subsequent law, and VABs, VAB attorneys, and VAB special magistrates must avoid any use of the obsolete Deltona case and must apply the current law as described above.

Superseded Concomitant Standard No. 10:

"Where an appraisal is based on sales of comparable properties, the appraiser necessarily considers all, and uses some, of the factors set forth in section 193.011."

This superseded conclusory standard appears in a pre-2009 decision in Bystrom v. Bal Harbour 101 Condominium Association, Inc., 502 So.2d 1312 (Fla. 3d DCA 1987), in which the decision also states:

> "*The taxpayers had the burden of presenting proof which excluded every reasonable hypothesis of a legal assessment.*"

Thus, this obsolete concomitant standard operated inextricably with the superseded "every reasonable hypothesis" standard rejected by the Florida Legislature in 1997 and again in 2009 in Section 194.3015 and in the last sentence in Section 194.301(1), F.S.

- The Florida Supreme Court has recognized that Florida's constitution delegates to the Legislature the responsibility of determining the specifics of how just valuation must be determined, stating "…*the framers of the constitution delegated to the Legislature the responsibility for deciding the specifics of how that 'just valuation' would be secured*." Sunset Harbour Condominium Association v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Collier County v. State, 733 So.2d 1012, 1019 (Fla. 1999).

- Current Florida statutes make absolutely clear that Boards and special magistrates must avoid superseded case law that is inconsistent with current statutory law.

The current statutory standards of professionally accepted appraisal practices and appropriate appraisal methodologies encompass a rich and readily available body of knowledge on the appropriate application of each of the three just valuation methods including the sales comparison method.

- Accordingly, there is absolutely no need for a special magistrate or Board attorney to consider superseded pre-2009 case law.

This obsolete concomitant standard also lacks any mention of the current standard of care for developing and reporting just valuations under the current statutory standard of "professionally accepted appraisal practices."

- The core elements of the current standard of care are discussed in the following excerpt from a recent article titled *Standards for Standards of Care*, published by the Appraisal Institute in the Fall 2023 edition of its quarterly magazine titled *Valuation*.

  - "*So, what is the standard of care for an appraiser? At a general level, it means the level of expertise, skill and diligence that is expected from a competent and qualified appraiser when performing a similar assignment*."

  - However, none of these core elements of the appraiser's current standard of care are addressed in the obsolete pre-2009 case law from which Superseded Concomitant Standard 10 and its variants originate.

Professionally accepted appraisal practices requires the appraiser to exercise due diligence and due care in identifying the legal, physical, and economic characteristics of the subject property and market, and in researching, confirming, and analyzing comparable sales. See Competency Rule and Standard 5, Mass Appraisal Development, *Uniform Standards of Professional Appraisal Practice*, *2024 Edition*, pages 13, 36, 37, and 39.

- However, these current requirements are not reflected in Superseded Concomitant Standard 10 and its variants.

After the landmark 2009 legislation that enacted Section 194.3015, F.S., and completely amended section 194.301 F.S., the eight just valuation factors in section 193.011 are now incorporated into section 194.301 in three places.

- These eight just valuation factors must now be applied together with the other just valuation standards in sections 194.301 and 194.3015, F.S., and in other applicable law, so that each standard is given professionally accepted and lawful meaning.

- The method of just valuation and the weight to be given to each of the section 193.011 factors is now governed solely by: 1) the legal, physical, and economic characteristics of the subject property; 2) the four additional determinative standards in sections 194.301 and 194.3015, F.S.; and 3) all other applicable law.

- In just valuations under current law, it is necessary to actually apply the section 193.011 factors that are appropriate for compliance with the four new determinative standards in sections 194.301 and 194.3015 and all other applicable law.

- Under the dictates of section 194.301 and 194.3015, F.S., for any section 193.011 factor not applied in a particular just valuation, the appraiser must report a clear, logical, fact-based, and professionally accepted reason for excluding the factor.

Boards and their special magistrates must avoid Superseded Concomitant Standard 10 and its variants and, instead, must apply the seven overarching standards for valid just valuations provided in current Florida law, which standards include professionally accepted appraisal practices and appropriate appraisal methodologies.

5. Compliance with All Other Applicable Law.

Note: This listing of points of law is not exhaustive.

Florida law defines real property as land, buildings, fixtures, and all other improvements to land. See Subsection 192.001(12), F.S.

Florida law defines personal property as being divided into the following four categories: 1) household goods, 2) intangible personal property, 3) inventory, and 4) tangible personal property. See Subsection 192.001(11), F.S.

To avoid double taxation, the just value of any personal property must be excluded from just valuations of real property.

Other applicable law includes just valuation standards for particular situations. These standards may exist in Florida Statutes or in currently applicable case law.

Examples of other just valuation standards from statutes include the following:

- Section 192.042(1), F.S., provides the January 1 date of assessment.
- Section 192.042(1), F.S., provides just valuation criteria for real property not substantially completed as of January 1.
- Sections 192.037(10), (11), and (12), F.S., provide additional just valuation criteria for timeshare real property.
- Sections 193.017, 420.507(46), 420.5093(5) and (6), and 420.5099(5) and (6), provide additional just valuation criteria for low-income housing property.
- Section 193.018, F.S., provides additional just valuation criteria for community land trust property.
- Section 193.0237, F.S., provides definitions and a methodology for the assessment of multiple parcel buildings.
- Section 193.501, F.S., provides additional just valuation criteria for certain conservation property.

Other applicable law may also include current case law standards such as:

- Case law specifies fee simple estate as the interest to be appraised in just valuations. See Schultz v. TM Fla.-Ohio Realty, Ltd., 577 So.2d 573 (Fla. 1991), and see Dept. of Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 (Fla. 1977).
- Case law precludes real property just valuations based on bulk ownership. See Interlachen Lakes Estates, Inc. v. Snyder, 304 So.2d 433 (Fla. 1973).
- Case law precludes just valuation methods that include intangible value. See Scripps Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), and see Singh v. Walt Disney Parks, --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).

6. Correct Application of an Appropriate Appraisal Methodology

After its 2009 amendment, section 194.301(1), F.S., provides in pertinent part:

"*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*."

An appropriate appraisal methodology is one that: 1) identifies and is appropriately based on the legal, physical, and economic characteristics of the subject property, 2) complies with overarching standards one through five, and 3) is correctly applied.

In Scripps Howard Cable Co. v. Havill, 665 So. 2d 1071 (Fla. 5th DCA 1995), *approved*, 742 So. 2d 210 (Fla. 1998), the court held that the appraisal method under review was not appropriate under the circumstances and certified the following question:

"Is the Income/Unit Rule Method of Appraisal an Appropriate Method of Assessing the Tangible Personal Property of Television Cable Companies?"

Then, in Scripps Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), the Florida Supreme Court answered the certified question in the negative and approved the decision of the Fifth District, holding that the method was not appropriate because it unlawfully included the value of intangible property.

In 2007, the U.S. Supreme Court held that disputes over ad valorem tax values require review of the appraisal methodology. See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007), 552 U.S. 9 (2007) ("We do not see how a court can go about determining true market value if it may not look behind the State's choice of valuation methods").

In August 2020, the court issued its final decision in Singh v. Walt Disney Parks, --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020), stating in pertinent part:

"*At trial, the parties agreed that the income approach to value was a professionally accepted appraisal practice and provided the most reliable indicator of value, but they disputed the proper methodology for performing such an assessment*."

"*Moreover, it ruled that even if the Rushmore method was a professionally accepted appraisal practice, it could not be used in a manner that violated Florida law. The trial court concluded that by including value attributable to Disney business activities on the Property, Appraiser applied the Rushmore method in a way that violated Florida law*."

"*We agree with the trial court that Appraiser, in the manner in which he applied the Rushmore method, impermissibly included the value of Disney's intangible business assets in its assessment*."

The Disney decision shows even if an appraisal practice is professionally accepted in other contexts, it cannot be applied in a manner that violates another part of Florida law.

Later, in October 2020, a trial court issued a final judgment stating as follows regarding appropriate appraisal methodology.

"*The Property Appraiser failed to prove by a preponderance of the evidence that his assessment was arrived at by utilizing methodology complying with section 193.011 and professionally accepted appraisal practices. Additionally, the Court finds the Property Appraiser's sole reliance on a cost approach without considering and preparing at least one of an income and/or sales comparison approach for the Subject Property type was not an appropriate appraisal methodology used in making the assessment*."
See Dillards, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).

7. A Just Valuation Developed and Reported in Compliance with Overarching Standards One though Six and Supported by a Preponderance of the Relevant and Credible Evidence

For a just valuation to withstand the scrutiny of review, it must be developed and reported in compliance with overarching standards one through six and must be supported by a preponderance of the relevant and credible just valuation evidence.

Petitioner Not Required to Present Opinion or Estimate of Value

The petitioner is not required to provide an opinion or estimate of just value.

No provision of law requires the petitioner to present an opinion or estimate of value.

The Board or special magistrate is not authorized to require a petitioner to provide an opinion or estimate of just value.

The petitioner has the option of choosing whether to present an opinion or estimate of just value.

Presentation of Evidence by the Parties

In a Board or special magistrate hearing, the property appraiser is responsible for presenting relevant and credible evidence in support of his or her determination. See Rule 12D-9.025(3)(a), F.A.C.

An appraisal report shall not be submitted as evidence in a value adjustment board proceeding in any tax year in which the person who performed the appraisal serves as a

special magistrate to that county value adjustment board for the same tax year. See Rule 12D-9.025(4)(g), F.A.C.

Under Subsection 194.301(1), F.S., in a hearing on just value, the first issue to be considered is whether the property appraiser establishes a presumption of correctness.

* The property appraiser shall present evidence on this issue first. See Rule 12D-9.024(7), F.A.C.

* While the property appraiser is required to present evidence on this issue first, the Board or special magistrate must allow the petitioner a chance to present evidence on this issue before deciding whether the presumption of correctness is established.

In a Board or special magistrate hearing, the petitioner is responsible for presenting relevant and credible evidence in support of his or her belief that the property appraiser's determination is incorrect. See Rule 12D-9.025(3)(a), F.A.C.

If the property appraiser establishes a presumption of correctness by proving by a preponderance of the evidence that the just value assessment was arrived at by complying with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the petitioner must prove by a preponderance of the evidence that:

1. The property appraiser's just valuation does not represent just value; or

2. The property appraiser's just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

However, if the property appraiser does not establish a presumption of correctness because he or she did not prove by a preponderance of the evidence that the just valuation was arrived at by complying with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the Board or special magistrate must take one of the two following actions:

1. If the record contains competent substantial evidence of just value that cumulatively meets the requirements of Section 193.011, F.S., and professionally accepted appraisal practices, the Board or special magistrate must establish a revised just value; or

2. If the record lacks such competent substantial evidence, the Board or special magistrate must remand the assessment to the property appraiser with appropriate directions with which the property appraiser must comply.

Evaluation of Evidence by the Board or Special Magistrate

Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special magistrate must:

1. Review the evidence presented by the parties;

2. Determine whether the evidence presented is admissible;

3. Admit the evidence that is admissible;

4. Identify the evidence presented to indicate that it is admitted or not admitted; and

5. Consider the admitted evidence.

The term "admitted evidence" means evidence that has been admitted into the record for consideration by the Board or special magistrate. See Rule 12D-9.025(2)(a), F.A.C.

"No evidence shall be considered by the board or special magistrate except when presented and admitted during the time scheduled for the petitioner's hearing, or at a time when the petitioner has been given reasonable notice." See Rule 12D-9.025(4)(a), F.A.C.

"If a party submits evidence to the board clerk prior to the hearing, the board or special magistrate shall not review or consider such evidence prior to the hearing." See Rule 12D-9.025(4)(b), F.A.C.

Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:

1. "*As the trier of fact, the board or special magistrate may independently rule on the admissibility and use of evidence."*

2. *"If the board or special magistrate has any questions relating to the admissibility and use of evidence, the board or special magistrate should consult with the board legal counsel."*

3. *"The basis for any ruling on admissibility of evidence must be reflected in the record."*

4. *"The special magistrate may delay ruling on the question during the hearing and consult with board legal counsel after the hearing."*

The Board or special magistrate shall consider the admitted evidence. See Rule 12D-9.025(1)(d), F.A.C.

A property owner generally is qualified, on account of ownership, to testify regarding the just value of his or her property. See In re Steffen, 342 B.R. 861 (Bkrtcy. M.D. Fla. 2006).

NOTE: More information on the admissibility of evidence is presented in Module 4 of this training.

Sufficiency of Evidence

When applied to evidence, the term "sufficient" is a test of adequacy. See Rule 12D-9.027(6), F.A.C.

Sufficient evidence is admitted evidence that has enough overall weight, in terms of relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6), F.A.C.

The Florida Supreme Court stated the following regarding sufficient evidence: *"Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character, weight, or amount, as will legally justify the judicial or official action demanded."* See Tibbs v. State, 397 So.2d 1120 (Fla. 1981). Also, see Moore v. State, 800 So.2d 747 (Fla. 5th DCA 2001).

A particular conclusion is justified when the overall weight of the admitted evidence meets the standard of proof that applies to the issue under consideration. See Rule 12D-9.027(6), F.A.C.

The Board or special magistrate must consider the admitted evidence and determine whether it is sufficiently relevant and credible to reach the "preponderance of the evidence" standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-9.027(5), and 12D-9.027(6), F.A.C.

Rule 12D-9.027(6), F.A.C., states the following in pertinent part: *"In determining whether the admitted evidence is sufficient for a particular issue under consideration, the board or special magistrate shall:*

(a) Consider the relevance and credibility of the admitted evidence as a whole, regardless of which party presented the evidence;

(b) Determine the relevance and credibility, or overall weight, of the evidence;

(c) Compare the overall weight of the evidence to the standard of proof;

(d) Determine whether the overall weight of the evidence is sufficient to reach the standard of proof; and

(e) Produce a conclusion of law based on the determination of whether the overall weight of the evidence has reached the standard of proof."

For administrative reviews of just valuations, “relevant evidence” is evidence that is reasonably related, directly or indirectly, to the statutory criteria that apply to the just valuation of the petitioned property. See Rule 12D-9.025(2)(b), F.A.C.

* This description means the evidence meets or exceeds a minimum level of relevance necessary to be admitted for consideration, but does not necessarily mean that the evidence has sufficient relevance to legally justify a particular conclusion. See Rule 12D-9.025(2)(b), F.A.C.

In evaluating the relevance of evidence, the Board or special magistrate must consider, as of the January 1 assessment date, how well the evidence relates to the petitioned property and to the statutory criteria found in Section 193.011, F.S., and in Section 194.301, F.S.

For administrative reviews of just valuations, “credible evidence” means evidence that is worthy of belief (believable). See *Black’s Law Dictionary, Eighth Edition,* page 596.

NOTE: More information on evaluating the relevance and credibility of evidence is presented in Module 11 of this training.

By itself, the property record card is not sufficient evidence for establishing a presumption of correctness for the assessment under Subsection 194.301(1), F.S.

Materials describing the general appraisal practices of the property appraiser alone, without discussing how those practices were applied to the assessment at issue, are not sufficient to establish a presumption of correctness for the assessment. See Property Tax Informational Bulletin PTO 09-29.

The approval of an assessment roll by the Department of Revenue is not evidence that a particular assessment was made in compliance with statutory requirements and is not sufficient to establish a presumption of correctness for the assessment. See Property Tax Informational Bulletin PTO 09-29.

Requirements for Establishing a Presumption of Correctness

A presumption of correctness for the assessment is not established unless the property appraiser proves by a preponderance of the evidence that the property appraiser’s just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. See Rule 12D-9.027(2)(a), F.A.C.

A presumption of correctness for the assessment is established only when the property appraiser proves by a preponderance of the evidence that the property appraiser’s just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

Requirements for Overcoming a Presumption of Correctness

If the property appraiser establishes a presumption of correctness, the petitioner can overcome the presumption of correctness by proving by a preponderance of the evidence one of the following:

1. The property appraiser's just valuation does not represent just value; or

2. The property appraiser's just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

If the property appraiser establishes a presumption of correctness and the petitioner does not overcome the presumption of correctness as described above, the assessment stands.

Establishing a Revised Just Value or Remanding the Assessment

If the property appraiser does not establish a presumption of correctness for the assessment, or if the petitioner overcomes the presumption of correctness, the Board or special magistrate must take one of the two following actions:

1. If the record contains competent substantial evidence of just value that cumulatively meets the requirements of Section 193.011, F.S., and professionally accepted appraisal practices, the Board or special magistrate must establish a revised just value; or

2. If the record lacks such competent substantial evidence, the Board or special magistrate must remand the assessment to the property appraiser with appropriate directions with which the property appraiser must comply.

NOTE: Information on the procedural requirements for remanded assessments is presented in Module 5 of this training.

Competent Substantial Evidence for Establishing a Revised Just Value

Competent substantial evidence for establishing a revised just value, as part of an administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:

1. Cumulatively meets the criteria of Section 193.011, F.S., and professionally accepted appraisal practices;

2. Tends to prove (is probative of) just value as of January 1 of the assessment year under review;

3. Is sufficiently relevant and credible to be accepted as adequate to support (legally justify) the conclusion reached; and

4. Otherwise meets all requirements of law.

Establishment of Revised Just Values in Administrative Reviews

The Board or special magistrate is required to establish a revised just value under either of the two following conditions:

1. The property appraiser does not establish a presumption of correctness for the assessment and the hearing record contains competent substantial evidence for establishing a revised just value as described above; or

2. The petitioner overcomes a presumption of correctness established by the property appraiser and the hearing record contains competent substantial evidence for establishing a revised just value as described above.

Within their scope of authority, the Board or special magistrate shall establish a revised just value based upon the competent substantial evidence for establishing a revised just value. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

Prior to 2009 and the adoption of House Bill 521, Section 194.301, F.S., provided that the Board may establish the assessment when authorized.

However, the current statute, effective for administrative reviews beginning in 2009, specifically requires that the Board shall establish the just value when authorized by law. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

"In establishing a revised just value, the board or special magistrate is not restricted to any specific value offered by one of the parties." See Rule 12D-9.027(2)(b)3.a., F.A.C.

In establishing a revised just value when required by law, Boards and special magistrates are not required, and are not authorized, to complete an independent valuation approach.

The establishment of a revised just value does not require the evidence necessary to complete an independent valuation approach.

The establishment of a revised just value only requires enough evidence to legally justify making an adjustment to the property appraiser's original just valuation.

In establishing a revised just value when required by law, Boards and special magistrates are authorized to make the necessary calculations.

Sequence of General Procedural Steps

This section sets forth below a sequence of general procedural steps for Boards and special magistrates to follow in administrative reviews of just valuations in order to fulfill the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.

This sequence of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

"The board or special magistrate shall not be required to make, at any time during a hearing, any oral or written finding, conclusion, decision, or reason for decision." See Rule 12D-9.025(9), F.A.C.

"The board or special magistrate has the discretion to determine whether to make such determinations during a hearing or to consider the petition and evidence further after the hearing and then make such determinations." See Rule 12D-9.025(9), F.A.C.

In following this sequence of steps, Boards or special magistrates must also meet the requirements of Rule 12D-9.025(1), F.A.C., which are the following:

* Review the evidence presented by the parties;

* Determine whether the evidence presented is admissible;

* Admit the evidence that is admissible; and

* Identify the evidence presented to indicate that it is admitted or not admitted.

The sequence of general procedural steps presented below is based on Rule 12D-9.027(2), F.A.C. The sequence of general procedural steps is as follows.

1. Consider the admitted evidence presented by the parties.

2. Identify and consider the essential characteristics of the petitioned property based on the admitted evidence and the factors in Section 193.011, F.S.

3. Identify the appraisal methodology used by the property appraiser in developing his or her just valuation of the petitioned property, and consider this appraisal methodology in light of the essential characteristics of the petitioned property.

4. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's methodology complies with Section 193.011,

F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

5. Determine whether the property appraiser's appraisal methodology is appropriate and whether the property appraiser established a presumption of correctness for the assessment.

   a) The property appraiser's just valuation methodology is not appropriate and a presumption of correctness is not established unless the admitted evidence proves by a preponderance of the evidence that the property appraiser's just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

   b) The property appraiser's just valuation methodology is appropriate and the presumption of correctness is established only when the admitted evidence proves by a preponderance of the evidence that the property appraiser's just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

6. If the Board or special magistrate determines that a presumption of correctness is established, the Board or special magistrate must then determine whether the admitted evidence proves by a preponderance of the evidence that:

   a) The property appraiser's just valuation does not represent just value; or

   b) The property appraiser's just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county. In making this determination, the Board or special magistrate may consider any admitted evidence regarding assessments among comparable properties within homogeneous areas or neighborhoods.

7. If the Board or special magistrate determines that one or both of the conditions specified under Step 6 exist, the presumption of correctness is overcome.

8. If the property appraiser does not establish a presumption of correctness, or if the presumption of correctness is overcome, the Board or special magistrate must determine whether the hearing record contains competent, substantial evidence of just value which cumulatively meets the criteria of Section 193.011, F.S., and professionally accepted appraisal practices.

   a) If the hearing record contains competent, substantial evidence for establishing a revised just value, the Board or an appraiser special magistrate must establish a revised just value based only upon such evidence. In establishing a revised just value, the Board or special magistrate is not restricted to any specific value offered by one of the parties.

b) If the hearing record lacks competent, substantial evidence for establishing a revised just value, the Board or special magistrate must remand the assessment to the property appraiser with appropriate directions for establishing just value. The property appraiser is required to follow these directions.

9. If the property appraiser establishes a presumption of correctness as described in Step 5 above and that presumption of correctness is not overcome as described in Step 6 above, the assessment stands.

Cost of Sale Deductions Are a Professionally Accepted Appraisal Practice

Section 4, Article VII, of the Florida Constitution, requires a just valuation of all property for ad valorem taxation, with certain conditions.

Florida's constitution has "*delegated to the Legislature the responsibility for deciding the specifics of how that 'just valuation' would be secured*." Sunset Harbour Condominium Ass'n v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Collier County v. State, 733 So.2d 1012, 1019 (Fla. 1999).

After 2009 legislation, each of the parts of sections 193.011, 194.301, and 194.3015, F.S., must now be interpreted and applied together so that each part is given appropriate meaning.

Regarding what is now section 193.011, F.S., in 1963 the Legislature enacted the initial version of the first seven just valuation factors, effective January 1, 1964. See Chapter 63-250, Laws of Florida, creating Section 193.021, F.S., which was re-numbered in 1969 as Section 193.011, F.S., by Chapter 69-55, Laws of Florida.

In 1967, the Florida Legislature added the eighth just valuation factor providing for property appraisers to deduct costs of sale in arriving at just valuations for ad valorem tax purposes. See Chapter 67-167, section 1, Laws of Florida (creating subsection 193.021(8), F.S., re-numbered in 1969 as subsection 193.011(8), F.S.).

- The rule of statutory interpretation is to assume that the Legislature intended its amendment to serve a useful purpose. "*Likewise, when a statute is amended, it is presumed that the Legislature intended it to have a meaning different from that accorded to it before the amendment*." Carlile v. Game and Freshwater Fish Commission, 354 So.2d 362 (Fla. 1977); see also Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st DCA 1998).

- For many years, Florida property appraisers have applied section 193.011(8), F.S., by making across-the-board, cost of sale deductions in arriving at just valuations of real property.

Section 193.011(8), F.S., generally referred to as the "cost of sale" factor or the "net proceeds of sale" factor, was last amended in 1978 and now states in its entirety:

"*The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property*."

- In this statute, the term "*net proceeds*" denotes a lower amount in dollars remaining after the mathematical operation of subtracting the "*usual and reasonable fees and costs of the sale*" (generally called "costs of sale") from a higher starting number also expressed in dollars but which in practice is also expressed as a percentage of the higher starting number.

    - Note: The "higher starting number" referenced in the preceding sentence is the number represented in section 193.011(1), F.S., which states in pertinent part: "*present cash value of the property, which is the amount a willing purchaser would pay a willing seller*…"

- In section 193.011(8), F.S., the term "*after deduction*" likewise denotes the mathematical operation of subtracting costs of sale.

While section 193.011(8), F.S., mentions three possible elements to be deducted, for the following reasons the deduction is generally considered to be for the "*usual and reasonable fees and costs of the sale*." For the reasons described below, neither of the other two possible elements have general applicability.

- First, the statute mentions *an "allowance for unconventional or atypical terms of finance arrangements*…" However, by definition, such allowance would be an infrequent occurrence and, accordingly, would not be part of the across-the-board, cost of sale deductions applied by property appraisers to all property.

- Second, the statute provides that "*When the net proceeds of the sale are utilized*…" the property appraiser "*shall exclude any portion of such net proceeds attributable*…" to personal property.

- Given that costs of sale have already been deducted to arrive at net proceeds before net proceeds can be utilized, any further deduction for personal property would be, under the statute's plain language and logic, separate and apart from the cost of sale deduction.

- The recorded selling prices for real property, used in the just valuation process for

ad valorem tax purposes, are based on the amount reported for the documentary stamp tax on real property transfer instruments (such as deeds), and personal property is not subject to the documentary stamp tax.

- Accordingly, there is no reason to believe that recorded selling prices generally include any transfer amount for personal property since only real property transfers are subject to the documentary stamp tax.

- For the limited situations where an appraisal method for certain property types involves significant tangible personal property, the professionally accepted practice is to deduct the tangible property value separately from the cost of sale deductions.

  - The existence of tangible personal property value in appraisal situations is proven when the property appraiser maintains a separate account for tangible personal property that corresponds with the real property parcel involved.

The Net Proceeds of Sale Factor is Unique Among the Eight Factors

Applying the net proceeds of sale factor (after deducting costs of sale) is different from applying the other seven factors in section 193.011, F.S.

- This is because property appraisers generally apply the other seven factors through their annual appraisal process that includes much work to collect, analyze, and apply property-specific appraisal data related to the other factors (such as property use, size, condition, etc.), as applicable.

- However, as described below in this module, given the general lack of provably reliable market data to demonstrate the typical, prevalent, and representative cost of sale deductions for the different classes of property, the standard of care for cost of sale deductions is for property appraisers to simply select a cost of sale deduction of 15 percent or less and apply it uniformly within the different classes of real property.

  - The general lack of market data for costs of sale adversely affects the reliability of any attempts to support specific cost of sale deductions, because the general lack impedes the verification of a specific cost of sale amount by comparing the amount to other such amounts (which are generally not available).

  - Therefore, given this general lack of market data necessary for proving specific cost of sale deductions for the different classes of real property, VABs and magistrates should generally apply the cost of sale percentage the property appraiser reported on Form DR-493 to achieve the overriding goal of uniformity.

When cost of sale deductions are lawfully made and clearly and accurately reported to DOR, taxpayers, and VABs, the property appraiser complies with applicable law including the statutory standard of professionally accepted appraisal practices.

When the VAB makes findings of fact on the cost of sale deductions the property appraiser made and then reported on Form DR-493, and then uniformly applies the same percentage deductions where necessary for uniformity without double-counting, the VAB likewise complies with law including the standard of professionally accepted appraisal practices.

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 for 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.

    - To view a comparison chart showing the cost of sale deductions made in just valuations of commercial and industrial property in Florida for the 1980 tax year and recent years, click here. This chart shows compelling evidence that cost of sale deductions have been a professionally accepted just valuation practice for decades in Florida's ad valorem appraisal process.

- 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 effort in futile attempts to research and reliably identify the usual (typical), prevalent, and representative costs of sale for each class of property.

- There is no law requiring disclosure of these costs of sale and, consequently, the task of conducting market research to reliably support the deductions for each of the classes of real property proved to be ineffective and unworkable.

- The reporting threshold rule provide a reasonable solution enabling uniform application of the net proceeds of sale factor (after deducting costs of sale).

- The professionally accepted appraisal practice is for property appraisers to uniformly make cost of sale deductions of 15 percent or less for all property within use code groups and then report these deductions on Form DR-493 while, understandably, avoiding the impracticable task of attempting to support the deductions in the absence of sufficiently reliable market data that demonstrates the typical, prevalent, and representative cost of sale deductions for each class of real property.

- This widely accepted, across-the-board practice has been the norm for decades and reflects the professionally accepted standard of care for making cost of sale deductions under section 193.011(8), F.S.

- DOR accepts these cost of sale deductions with the understanding and belief that the property appraiser has made these deductions uniformly to each parcel within the property groups listed on Form DR-493.

To facilitate annual reporting of cost of sale deductions in accordance with section 192.001(18), F.S., and Rule 12D-8.002(4), F.A.C., DOR adopted Form DR-493 for property appraisers to use.

- Each year, using Form DR-493, property appraisers are required to report to DOR the cost of sale deductions the property appraiser made to recorded selling prices or fair market value for each parcel within each of the real property use code groups listed on the form.

- The Form DR-493 that each property appraiser annually completed and reported are available by clicking on “Assessment Roll Evaluation and Approval” at: http://floridarevenue.com/property/Pages/DataPortal.aspx

To view statewide summaries of the cost of sale deductions reported by each county for the past several years, click here.

- 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.

- Notably, the holding in this case was based on a stipulation of facts regarding the cost of sale deductions made in arriving at just valuations of commercial and industrial property in Florida for the 1980 ad valorem tax year. To view a comparison chart showing the cost of sale deductions made in just valuations of commercial and industrial property for the 1980 tax year and recent years, click here.

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.

    - 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 before the First District Court, 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.

Just Valuation Reporting on Cost of Sale Deductions

An example of an actual reported practice of making across-the-board, cost of sale deductions is contained in the Hillsborough County property appraiser's 2010 Mass Appraisal Report (authored by Tim Wilmath, MAI, Director of Valuation, at that time).

- This 2010 Mass Appraisal Report was presented as evidence at Board hearings.

- Below are excerpts from this report explaining how across-the-board, cost of sale deductions 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 Hillsborough 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."

"In the sales comparison approach, sale prices are adjusted by 15% before adjustments for various factors are applied. This adjustment is evident in the screen shot below."

"The income models created by our office are designed to arrive at values that are approximately 85% or less of gross sale prices of similar properties."

"For all property types, the property appraiser strives to achieve assessed values that are at or below 15% of the prior year's selling prices. This is evident in the graph below that illustrates the difference between assessments and selling prices over the past 6 years."

In another example of an actual reported practice, a document produced in 2011 by the Palm Beach County property appraiser contains the following description of how that office applies across-the-board, cost of sale deductions in all three approaches to just valuation of all real property, without regard to whether the property was sold.

"*In the Office of the Palm Beach County Property Appraiser, all recorded sales of real property are reduced by 15% to reflect the seller's typical "costs of sale." Thus, only 85% of the recorded sales price is recognized by the Property Appraiser. This adjusted sales prices (reflecting the seller's "net proceeds") are then entered into the Property Appraiser's Computer Assisted Mass Appraisal (CAMA) program, along with other data pertaining to the remaining seven statutory criteria enumerated in section 193.011, Florida Statutes. From this mass compilation of data involving thousands of entries, the Property Appraiser's computer system generates a market value assessment for the particular kind of property. This is how value indications of real property are developed. The CAMA system, therefore, determines a real property assessment which is based upon the consideration and use, where appropriate, of all eight factors and complies with the requirements of §193.011*."

"*The CAMA-generated assessment is neither a sales comparison approach to determining value nor an income capitalization approach to value nor a cost less depreciation approach to value. Rather, it is a hybrid of all three appraisal methods in which the eighth criteria is properly considered and used when deriving just value.*"

Going forward, property appraisers can further the VAB's across-the-board uniformity in handling cost of sale deductions by transparently labeling and showing the specific mathematical calculations actually applied in deducting costs of sale in each of the three appraisal approaches.

- The second sentence in the Preamble to the Uniform Standards of Professional Appraisal Practice, states: "*It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading*."

- Further, USPAP's Advisory Opinion 32 states in pertinent part: "*Therefore, if an appraiser communicates mass appraisal or assignment results for a single property, the communication must be meaningful and must not be misleading*."

- In the context of reporting cost of sale deductions, non-specific narrative is not meaningful and does not further accuracy or uniformity in VAB decisions.

Uniformity is Paramount in Cost of Sale Deductions In VAB Petitions

Section 195.0012, F.S., states in its entirety:

"*Legislative intent.—It is declared to be the legislative purpose and intent in this entire chapter to recognize and fulfill the state's responsibility to secure a just valuation for ad valorem tax purposes of all property and to provide for a uniform assessment as between property within each county and property in every other county or taxing district*."

The Legislature's enactments for just valuations must be applied to all property. See Sunset Harbour Condominium Ass'n v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Interlachen Lakes Estates, Inc. v. Snyder, 304 So. 2d 433, 434 (Fla. 1973).

The orderly and uniform application of state law is an important public policy. See Crossings at Fleming Island v. Echeverri, 991 So. 2d 793, 797 (Fla. 2008).

Within the context and scope of their respective duties, property appraisers, value adjustment boards, and courts must follow the same legal standards. See Countryside Country Club, Inc. v. Smith, 573 So. 2d 14, 15-16 (Fla. 2nd DCA 1990).

- Also, see Rule 12D-10.003(1), F.A.C., stating regarding the VAB, "…*the board is bound by the same standards as the county property appraiser in determining values*…"

- This "same standard" requirement is also reflected in section 194.301, F.S.

Notably, 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 long-standing, undeniable, mathematical facts 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.

- This holding requires uniform cost of sale deductions, without regard to whether the property was sold or to the method or approach used to value the property.

Further, a failure to uniformly apply the "net proceeds" of sale factor, to both sold and unsold parcels, would be selective reappraisal.

The text titled *Mass Appraisal of Real Property*, published in 1999 by the International Association of Assessing Officers, page 315, describes the highly undesirable practice of selective reappraisal as follows:

"*The reliability of sales ratio statistics depends on unsold parcels being appraised in the same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio results, possibly rendering them useless. Equally important, selective reappraisal of sold parcels ("sales chasing") is a serious violation of basic appraisal uniformity and is highly unprofessional*."

Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).

Applicable law provides for uniform cost of sale deductions in just valuations, without regard to:

(1) whether the property was sold,
(2) whether mass appraisal or single-property appraisal is used,
(3) the appraisal approach used to value the property,
(4) whether the petitioner is seeking an increase or decrease in just value, or
(5) whether appraisal development or VAB review is involved.

Under applicable law, there is no legal authority for variation in application of cost of sale deductions based on any of the preceding five items, and VABs and special magistrates are strongly advised to avoid using any of these five items in deciding when and how to apply cost of sale deductions in administrative reviews.

Cost of Sale Deductions Must be Applied Uniformly Using a Single Standard

Regarding the uniform application of the net proceeds of sale factor, section 193.011(8), F.S., provides in pertinent part:

"When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section…"

The term "*sold parcel or any other parcel*" encompasses all parcels and means the net proceeds of sale factor is to be applied in the just valuation of all property, not just property that was sold or some other subset.

Further, 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 County. Nebraska, 260 U.S. 441, 446–47 (1923) (cited by the Florida Supreme Court in Southern Bell Telephone Co. v. Dade County, 275 So. 2d 4, 8 (Fla. 1973).

Additionally, 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 addressed disparate treatment among comparable property in applying the cost of sale deduction and held that when comparing valuation practices under review to valuation practices for other comparable property, the overriding consideration is to apply a single standard for both groups.

- Notably, this holding was specifically based on the net proceeds of sale factor (after deducting costs of sale) in section 193.011(8), F.S.

The determinative standard enacted in 2009 in section 194.301(2)(a)3., F.S., precludes a property appraiser's just valuations from being "*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*."

- This statutory standard is clearly aimed at preventing disparate treatment by the property appraiser, like the holdings in the federal cases described above.

As explained above, the overriding consideration in handling cost of sale deductions is to apply them uniformly using a single standard.

Below is some useful information to assist the VAB and special magistrates with achieving uniformity (without double-counting) in handling cost of sale deductions.

Cost of Sale Deductions in Each of the Three Valuation Approaches

In reviewing and applying just valuation evidence and making written findings of fact, the VAB or special magistrate must specifically apply (without double-counting) mathematically correct cost of sale deductions in each of the three professionally accepted valuation approaches (and any variants thereof) for which evidence may be presented.

These three approaches are:

(1) the Sales Comparison Approach,
(2) the Cost Less Depreciation Approach, and
(3) the Income Capitalization Approach.

To enable readers to understand written recommended decisions, the VAB or special magistrate must use a clear, accurate, and transparent method for making cost of sale deductions consistent with the mathematical operation of subtraction ("…*net proceeds…after deduction…*") as described in section 193.011(8), F.S.

It is critical for special magistrates to transparently label and display cost of sale calculations for each approach used. The preferred method is described as follows.

(1) Arrive at a preliminary value (before cost of sale deduction),
(2) Then subtract costs of sale consistent with the percentage on Form DR-493, and
(3) Arrive at a just value for the petitioned property.

It is important to use the term "preliminary value" to denote the number from which costs of sale are deducted. It is also important to use the term "just value" to denote the number resulting from subtracting costs of sale from the preliminary value, for consistency with the plain language of section 193.011(8), F.S.

- Another acceptable method is to multiply the preliminary value (before cost of sale deduction) by a net proceeds of sale multiplier equal to (1 minus the cost of sale decimal). For example, if the cost of sale percentage is 15 percent, the cost of sale decimal would be 0.15 and the net proceeds of sale multiplier would be 0.85.

- However, cost of sale deductions in the income capitalization approach can be more complex and more prone to error. For more information, click here to see a 2022 advisory memo on cost of sale deductions in the income capitalization approach.

Cost of Sale Deductions in the Three Categories of Just Valuation Evidence

To achieve uniformity and consistency in handling cost of sale deductions without double-counting the deductions, the VAB's findings of fact should specifically address cost of sale deductions in each of the three general categories of evidence in VAB reviews of just value assessments, as listed and described below.

Category 1: This is evidence presented by the property appraiser to show the appraisal methodology used in making the just value assessment presented by the property appraiser at the beginning of the hearing.

Category 2: This is comparative evidence assembled by the property appraiser in connection with the petition and presented by the property appraiser to support the presented just value. ~~and~~

Category 3: This is comparative evidence presented by the petitioner to support the petition.

First, the VAB or special magistrate must make a finding of fact on the cost of sale percentage applied in Category 1, based on the subject DR-493 in evidence or other knowledge of the DR-493 percentage as a professionally accepted appraisal practice.

Then, for each valuation data set, analysis, or approach in Categories 2 and 3, the VAB or special magistrate must make a finding of fact on whether the data set, analysis, or approach already shows a cost of sale deduction.

- For each such data set, analysis, or approach where a cost of sale deduction equal to the DR-493 deduction has already been made, the VAB or magistrate must avoid making a second deduction within that particular data set, analysis, or approach.

- For each data set, analysis, or approach where a cost of sale deduction equal to the DR-493 deduction has not been made, the VAB or magistrate must make and clearly show the appropriate cost of sale deduction for each such data set, analysis, or approach if relying upon it in the review.

Findings of Fact on Cost of Sale Deductions in Written VAB Decisions

In making written findings of fact, the VAB and special magistrates must specifically address how cost of sale deductions were handled in the evidence presented and in any analyses used by the VAB and magistrates in reviewing or revising a just value assessment.

- The written findings of fact must clearly state for readers the results of reviewing the evidence (or lack thereof) regarding cost of sale deductions.

- The written findings of fact must clearly state for readers the reasons why the VAB or magistrate made, or did not make, a cost of sale deduction within each appraisal data set, analysis, or approach presented as evidence within the three categories of evidence described above.

Hypothetical Examples of a VAB or Special Magistrate Handling Cost of Sale Deductions in the Three Evidence Categories

For educational purposes, below are five hypothetical situations showing both correct and incorrect examples of a VAB or special magistrate handling cost of sale deductions in deciding the results of petitions on just value assessments.

Each of these five hypothetical examples is based on the VAB or special magistrate having already made a finding that the property appraiser made a cost of sale deduction in developing the original just value assessment.

Example 1:

The Category 2 evidence included an income capitalization approach along with a cost less depreciation approach in which the land value was developed by an analysis of comparable land sales. In the income capitalization approach, a mathematically correct cost of sale deduction method was applied. However, in the other approach, a cost of

sale deduction was applied in the land sale analysis but not to the depreciated cost of the improvements. So, the special magistrate made findings of fact on what was done and not done regarding costs of sale in the Category 2 evidence, and then made a cost of sale deduction to the depreciated cost of the improvements and stated the reason.

- In Example 1, the special magistrate did not err in making this cost of sale deduction and did not double-count the deduction.

Example 2:
In a petition where the petitioner was seeking an increase in just value, the Category 2 evidence included a comparable sale analysis in which the recorded selling price of each of the comparable sales was multiplied by a "net proceeds of sale factor" equal to (1 – cost of sale in decimal form). Then, after all other adjustments were made to the comparable sales, the analysis arrived at a reconciled value indication and then showed a cost of sale deduction made by subtracting costs of sale from such indication to arrive at a "final just value." The special magistrate then relied upon this "final just value" to determine that the original just value should not be increased.

- In Example 2, the special magistrate erred by relying upon a comparative sale analysis in which the cost of sale deduction was double-counted.

Example 3:
The Category 3 evidence included an income capitalization approach which applied an incorrect cost of sale deduction method. However, the special magistrate did not realize that this applied method was erroneous and relied upon the resulting incorrect value in deciding the outcome of the petition.

- In Example 3, the special magistrate erred by relying upon an income capitalization approach in which the cost of sale deduction was erroneously applied.

Example 4:
In Categories 2 and 3, respectively, each of the parties presented an income capitalization approach where the cost of sale deduction was made in arriving at a just value indication. The Category 2 evidence showed that the cost of sale deduction was made by a mathematically correct method of loading the capitalization rate. In Category 3, the evidence showed that the petitioner first arrived at a preliminary value (before deducting costs of sale) and then transparently made a correct cost of sale deduction by subtracting costs of sale to arrive at a just value indication. After reviewing the evidence, the special magistrate determined that the Category 2 net operating income estimate was more reliable and that the Category 3 overall capitalization rate was more reliable, and used these to develop an independent income capitalization approach to arrive at a preliminary value from which the magistrate then deducted costs of sale, using a mathematically correct method, to arrive at an independent indication of just value.

- In Example 4, the special magistrate did not err and did not double-count the deduction because the magistrate used input variables that did not already have a

cost of sale deduction and, thus, produced a preliminary value (before cost of sale deduction) from which the magistrate then deducted costs of sale to arrive at just value.

Example 5:
The Category 3 evidence included an income capitalization approach in which the capitalization rate was loaded for the cost of sale deduction using a mathematically correct method. However, after a value indication was calculated using such loaded capitalization rate, this Category 3 income capitalization approach then showed a transparent cost of sale deduction made by subtracting costs of sale from the value indication to arrive at a "just value" for the petitioned property. For this Category 3 evidence, the special magistrate made findings of fact stating that two cost of sale deductions were made, resulting in double-counting the deduction. The magistrate then stated that this erroneously derived "just value" would not be relied upon.

- In Example 5, the special magistrate did not err because the magistrate correctly recognized that two cost of sale deductions were made in this income capitalization approach and, accordingly, did not rely upon the resulting value.

The Appropriate Standard for Reviewing Evidence Intended to Show a Cost of Sale Deduction Different From the Deduction Reported on Form DR-493

Given the lack of reliable data and other unique realities of the cost of sale factor as described previously in this module, in any case where a petitioner presents evidence intended to show a cost of sale deduction different from the deduction the property appraiser reported on Form DR-493, the VAB and special magistrates should:

- Consider the general lack of demonstrably reliable market data to prove typical, prevalent, and representative cost of sale deductions for the different property classes and the resulting adverse impact on the reliability and representativeness of any evidence presented in support of a non-493 cost of sale deduction.

- Consider that the professionally accepted appraisal practice used in developing the just value assessment is to select the cost of sale percentage shown on Form DR-493 and then apply it uniformly to all property within the subject use code group on the DR-493, and that the VAB and special magistrate is required to follow professionally accepted appraisal practices as well.

- Determine whether the presented evidence is sufficiently reliable to prove that the non-493 deduction is typical, prevalent, and representative of all property within the same class.

To be sufficiently reliable, evidence must demonstrate that the non-493 deduction is typical, prevalent, and representative of all property within the subject class of property.

- If the evidence is not sufficiently reliable to demonstrate that such non-493 deduction is typical, prevalent, and representative of all property within the subject class of

property, the VAB and magistrates must not apply the non-493 deduction and must apply the cost of sale deduction reported by the property appraiser on Form DR-493.

- Before applying a non-493 deduction, the VAB and special magistrate must make written findings of fact that explain why and how the non-493 evidence is sufficiently reliable to demonstrate that the non-493 deduction is typical, prevalent, and representative for all property within the subject class of property.

In defending against a non-493 deduction, the property appraiser could argue that the cost of sale deduction shown on the DR-493 is a professionally accepted appraisal practice that sets a standard which the VAB and special magistrates must follow for consistency with the overarching standard of uniformity.

- Presumably, the property appraiser would not present "evidence" intended to show a non-493 deduction for a petitioned property, since such "evidence" would:

  - undermine the property appraiser's attempt to establish a presumption of correctness under section 194.301(1), and

  - would also serve as proof of the property appraiser attempting to show an appraisal practice for the petitioned property that is arbitrarily different from the appraisal practices applied by the property appraiser to other comparable property as shown on the property appraiser's Form DR-493.

Uniform Treatment of Cost of Sale Deductions Regardless of Whether a Petition is Seeking a Decrease or Increase in Just Value

- A petitioner may seek either a decrease or an increase in the just value of the petitioned property.

- To achieve uniformity, the VAB and special magistrates must handle the cost of sale deductions using the same standards (including the cost of sale percentages reported on Form DR-493) and procedures regardless of whether the petitioner is seeking an increase or a decrease in the just value assessment.

Avoiding Erroneous Arguments and Procedures in Cost of Sale Deductions

In a petition, the VAB or special magistrate may be confronted with erroneous arguments or advice that must be avoided in making findings of fact and in producing written decisions.

Examples of such erroneous arguments are listed below.

- The cost of sale deduction applies only to property that was sold (this is wrong).

- The cost of sale deduction applies only to property appraised by the sales comparison approach (this is wrong).

- The cost of sale deduction applies only to just values produced by a mass appraisal system (this is wrong).

- The cost of sale deduction applies only to groups of property in the aggregate to produce a statistical range and does not apply to any individual property (this is wrong).

- The cost of sale deduction applies only when the petitioner is seeking a decrease in just value (this is wrong).

- The cost of sale deduction applies only when the petitioner is seeking an increase in just value (this is wrong).

- The cost of sale deduction cannot be applied by the VAB because only the property appraiser can make the deduction (this is wrong).

- The cost of sale deduction is unconstitutional (this is wrong because no court has ever ruled that the cost of sale deduction under section 193.011(8), F.S., is unconstitutional).

Also, the VAB and special magistrates must avoid incorrect procedures and must use mathematically correct procedures in applying cost of sale deductions without double-counting. Such procedures were discussed previously in this module.

Destruction Caused by Sudden and Unforeseen Collapse and Abatements of Taxes Due to Catastrophic Events

Note: Legislation enacted in 2023 amended section 197.319, F.S. to make several revisions to the catastrophic event refund process. Redefined "postcatastrophic event just value" as the just value of the residential parcel on January 1 of the year in which a catastrophic event occurred, adjusted by subtracting the just value of the residential improvement on January 1 of the year in which the catastrophic event occurred. Revised the definition of "residential improvement" as a residential dwelling or house on real estate used and owned as a homestead as defined in section 196.012(13), F.S., or nonhomestead residential property as defined in s. 193.1554(1), F.S. Amended the definition of "uninhabitable" as the loss of use and occupancy of a residential improvement for the purpose for which it was constructed resulting from damage to or destruction of, or from a condition that compromises the structural integrity of, the residential improvement which was caused by a catastrophic event. A property owner must file an application for refund of taxes paid for the year in which a catastrophic event occurs with the property appraiser by March 1 of the year following the catastrophic event. The application for refund must describe the catastrophic event. To determine uninhabitability, the application must be accompanied by supporting documentation, including, but not limited to utility bills, insurance information, contractor's statements, building permit applications, or building inspection certificates

of occupancy. No later than April 1 of the year following the date the event occurred, the property appraiser must notify the applicant if the property appraiser determines the applicant is not entitled to receive a refund. If the property appraiser determines the applicant is not entitled to a refund, the applicant may file a petition with the value adjustment board requesting the refund be granted. Added provision that the petition to the value adjustment board must be filed with the value adjustment board on or before the 30th day following the issuance of the notice by the property appraiser. The property appraiser must issue an official written statement to the tax collector and applicant, if the property appraiser determines the applicant is entitled to a refund, within 30 days after the determination but no later than by April 1 of the year following the date on which the catastrophic event occurred. The tax collector shall calculate the damage differential. If the taxes for the year the catastrophic event occurred have been paid, the tax collector must process a refund in an amount equal to the catastrophic event refund. If the property taxes for the year in which the event occurred have not been paid, the tax collector must process a refund in an amount equal to the catastrophic refund event refund only upon receipt of timely payment of property taxes for the year in which the event occurred. For purposes of this section, a residential improvement that is uninhabitable has no value. The catastrophic event refund is determined only for purposes of calculating tax refunds for the year in which the residential improvement is uninhabitable because of a catastrophic event and does not determine a parcel's just value as of January 1 of any following year. Amendments made by this act first apply to the 2024 tax roll. See Chapter 2023-157, Sections 13 and 14, Laws of Florida (HB 7063), effective July 1, 2023.

Applicants for this refund will use Form DR 465, Application for Catastrophic Event Tax Refund, Form DR-486, Petition to Value Adjustment Board - Request for Hearing, and the VAB will issue a decision using Form DR-485C, Decision of the Value Adjustment Board Catastrophic Event Tax Refund.

Note: Legislation enacted in 2022 created section 197.3181, F.S., to provide a prorated refund of property taxes for residential improvements rendered uninhabitable for at least 30 days by Hurricane Ian or Hurricane Nicole during the 2022 calendar year. This section applied retroactively to January 1, 2022, and expired January 1, 2024. ~~The bill defines the terms: uninhabitable; damage differential; disaster relief refund; percent change in value; postdisaster just value; and residential improvement. "Residential improvement" means a residential dwelling or house on real estate used and owned as a homestead as defined in s. 196.012(13) or used as nonhomestead residential property as defined in section 193.1554(1). F.S. If a residential improvement is rendered uninhabitable for at least 30 days due to Hurricane Ian or Hurricane Nicole, 2022 taxes originally levied and paid may be refunded pro rata based on a portion of their property taxes for the time the property was uninhabitable. To receive a refund, the property owner must file an application with the property appraiser no sooner than January 1, 2023, and no later than April 3, 2023. The application must identify the parcel containing the residential improvement rendered uninhabitable, and the number of days the improvement was uninhabitable during 2022. The application must be accompanied by supporting documentation and verified under oath. Failure to file such an application by~~

~~April 1, 2023, waives a property owner's claim for a refund. Upon review, no later than June 1, 2023, the property appraiser must either notify the applicant of ineligibility or notify both the applicant and tax collector if the applicant is eligible for a refund. Applicants found ineligible may file a petition with the value adjustment board requesting that a refund be granted. Section 197.3181, F.S., applies retroactively to January 1, 2022, and expires January 1, 2024. See Chapter 2022-272, Section 3, Laws of Florida, (SB 0004A), effective December 16, 2022.~~

~~See also Rule 12DER23-01. Applicants for this refund will use Form DR-5001, Application for Hurricane Ian or Hurricane Nicole Tax Refund, Form DR-486, Petition to Value Adjustment Board - Request for Hearing, and the VAB will issue a decision using Form DR 5002 Decision of The Value Adjustment Board Hurricane Ian or Hurricane Nicole Tax Refund. This emergency rule and revised form supersede the previous emergency rule, 12DER22-13 "Hurricane Ian or Hurricane Nicole Tax Refund" and the previous Form DR-5001. Emergency Rule 12DER23-01 adopts revised Form DR-5001 to allow taxpayers to seek a refund of property taxes paid for 2022 if their residential improvement was rendered uninhabitable by Hurricane Ian or Hurricane Nicole.~~

Note: Legislation enacted in 2022 amended section 194.032(1)(b), F.S., to allow a value adjustment board to hear appeals pertaining to a property appraiser's denial of tax abatements under section 197.3195, F.S., relating to destruction caused by a sudden and unforeseen collapse, and, starting in 2023, tax refunds under section 197.319, F.S., relating to residential improvements rendered uninhabitable by a catastrophic event. Although section 194.032(1)(b), F.S., permits 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 section 197.3195, F.S., this statute requires the value adjustment board to enter a final decision that dismisses any petition filed concerning the value of the parcel for the year of destruction. Also, since section 197.319, F.S., is not effective until January 1, 2023, the amendment permitting the value adjustment board to meet and hear petitions filed under that statute will not apply until the 2023 value adjustment board. The law specifies that section 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 section 197.3195, F.S. due to a sudden and unforeseen collapse. See Chapter 2022-97, Section 4, Laws of Florida, (CS/HB 7071), effective May 6, 2022.

This legislation 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 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.

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.

The legislation 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 such application, the property appraiser must investigate to determine whether the applicant is entitled to the refund. If the property owner fails to file the application by the March 1 deadline due to particular extenuating circumstances, they may file an application for refund and may file a petition to the value adjustment board requesting that the refund be granted. See Chapter 2022-97, Sections 14 and 15, Laws of Florida, (CS/HB 7071), effective January 1, 2023.

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
  - The Florida Agricultural Classified Use Real Property Appraisal Guidelines
  - Pollution Control Devices
  - Noncommercial Recreation and Conservation Lands
  - Historic Property: Sections 193.503 and 193.505, F.S.
  - High-water Recharge Property
  - Working Waterfront Property (Classification Effective in 2010)
  - Renewable Energy Source Devices
- Competent Substantial Evidence for Establishing a Revised Classified Use Value
- The Administrative Review Process for Classified Use Valuations

PART 2
Administrative Reviews of Assessed Valuations

- Statutory Criteria for Assessed Valuation of Limited Increase Property
  - Assessment Increase Limitation for Homestead Real Property
  - Assessment Increase Limitation for Non-Homestead Real Property
  - Differences in Administration Between Sections 193.1554 and 193.1555, F.S.
- Authority for Administrative Reviews of Assessed Valuations
- Competent Substantial Evidence for Establishing a Revised Assessed Value
- The Administrative Review Process for Assessed Valuations

Learning Objectives

After completing this training module, the learner should be able to:

- Identify and apply the definition of classified use value
- Recognize and apply the statutory criteria for classified use valuation
- Identify when the Board or special magistrate is required or is NOT required to make determinations such as findings, conclusions, or decisions

- Identify and apply the sequence of general procedural steps for administrative reviews of classified use valuations
- Recognize how to apply the preponderance of the evidence standard of proof in administrative reviews of classified use valuations
- Identify the alternative actions required when a presumption of correctness was not established, or was established but later was overcome
- Identify and apply the elements of the definition of competent substantial evidence for establishing a revised classified use value
- Recognize the conditions under which a Board or special magistrate is required to establish a revised classified use value
- Identify and apply the definition of assessed value
- Recognize and apply the statutory criteria for the assessed valuation of homestead property
- Recognize and apply the statutory criteria for the assessed valuation of non-homestead property
- Recognize differences in administration of limitations on non-homestead residential property with nine or fewer units and other non-homestead property
- Identify and apply the sequence of general procedural steps for administrative reviews of assessed valuations of limited increase properties
- Recognize how to apply the preponderance of the evidence standard of proof in administrative reviews of assessed valuations of limited increase properties
- Identify and apply the elements of the definition of competent substantial evidence for establishing a revised assessed value
- Recognize the conditions under which a Board or special magistrate is required to establish a revised assessed value

PART 1

Overview of Classified Use Valuation

"Classified use value" means an annual determination of the value of property that is assessed solely based on character or use, without regard to the property's highest and best use.

Classified use valuations are provided in Section 4(a), (b), and (e), Article VII, of the Florida Constitution (agricultural land, noncommercial recreational land, high-water recharge, conservation land, historic property) and in Section 4(j), Article VII of the State Constitution (working waterfront properties).

NOTE: Legislation has not been enacted to implement assessment exclusions for residential improvements for resistance to wind damage under Section 4(i), Article VII, of the Florida Constitution.

Except for working waterfront property, the statutory criteria for valuation of classified use property are provided in Chapter 193, Part 2, F.S.

The statutory criteria for working waterfront property are set forth in Section 4(j), Article VII, of the Florida Constitution.

Statutory Criteria for Valuing Different Types of Classified Property

Statutory criteria for the following types of property classifications are presented below.

Types of Property Classifications

- Agricultural Property
- Pollution Control Devices
- Noncommercial Recreational and Conservation Lands
- Historic Property
- High-water Recharge Property
- Working Waterfront Property
- Renewable Energy Source Devices

Statutory Criteria for Valuing Agricultural Property

Under Subsection 193.461(6)(a), F.S., the classified use valuation of agricultural land shall consider the following use factors only:

* The quantity and size of the property;

* The condition of the property;

* The present market value of the property as agricultural land;

* The income produced by the property;

* The productivity of the land in its current use;

* The economic merchantability of the agricultural product; and

* Such other agricultural factors as may from time to time become applicable and which are reflective of the standard present practices of agricultural use and production.

Agricultural Property: The Income Approach

Under Subsection 193.461(6), F.S., when using the income approach to value agricultural land, the appraiser shall consider the average of the income from the property for the past five years, rather than the income from the last year alone.

* Irrigation systems, including pumps and motors physically attached to the land, shall be considered part of the acreage under the income approach and not have a separately assessable value.

* Likewise, litter and waste containment structures on poultry and dairy farms shall be considered part of the acreage under the income approach and not have a separately assessable value.

Agricultural Property: Quarantine and Eradication Programs

Under Subsection 193.461(7), F.S., agricultural land taken out of production due to a state or federal quarantine or eradication program shall continue to be classified as agricultural property.

* If the land in the program lies fallow or is used for non-income producing purposes, the land shall have a de minimus value of no more than $50 per acre.

* If the land in the program is used for another permissible agricultural use, the land shall be assessed based on that usage.

* If the land is converted to a non-agricultural use, it will be assessed as non-agricultural property under section 193.011, F.S.

Note: Legislation was enacted in 2018 to amend section 193.461(6)(c), F.S. to provide that screened enclosed structures used in horticultural production for protection from pests and diseases or to comply with state or federal eradication or compliance agreements are a part of the average yields per acre and have no separately assessable value. See Chapter 2018-84, Section 1, Laws of Florida (CS/CS/SB 740).

Note: Legislation was enacted in 2016 to amend section 193.461(7)(a), F.S., to provide that lands classified for assessment purposes as agricultural lands that a state or federal eradication or quarantine program takes out of production will remain agricultural lands for the remainder of the program. Lands that these programs convert to nonincome-producing uses will continue to be assessed at a minimum value of up to $50 per acre on a single-year assessment methodology.

This legislation identifies the Citrus Health Response Program as a state or federal eradication or quarantine program. The bill allows land to retain its agricultural classification for five years after the date of execution of a compliance agreement between the landowner and the Department of Agriculture and Consumer Services (DACS) or a federal agency, as applicable, for this program or successor programs.

Lands under these programs that are converted to fallow or otherwise nonincome-producing uses are still agricultural lands assessed at a minimal value of up to $50 per acre on a single-year assessment methodology while fallow or used for nonincome-producing purposes. Lands under these programs that are replanted in citrus according to the requirements of the compliance agreement are classified as agricultural lands and are assessed at a minimal value of up to $50 per acre, on a single-year assessment methodology, during the five-year term of agreement.

See Chapter 2016-88, Sections 1 and 5, Laws of Florida (CS/CS/HB 749).

Agricultural Property: Special Types

In addition to the classified use assessments of agricultural land discussed previously, there are additional provisions in Sections 193.451 and 193.4615, F.S., which address specific kinds of agricultural property.

These provisions usually deal with the assessment of tangible personal property and instruct that such property should either have no value placed upon it or that it should be valued at salvage value.

Items with no value:

* Growing annual crops
* Nonbearing fruit trees
* Raw agricultural products (until offered for sale)

Items valued as salvage:

* Citrus grading and classification equipment leased from the Department of Agriculture
* Obsolete agricultural equipment

Aquaculture

Note: 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.

The Florida Agricultural Classified Use Real Property Appraisal Guidelines

~~The Florida Agricultural Classified Use Appraisal Guidelines~~

Below are provisions from Section 195.032, Florida Statutes, describing the Agricultural Classified Use Appraisal Guidelines.

> *"The standard measures of value shall provide guidelines for the valuation of property and methods for property appraisers to employ in arriving at the just valuation of particular types of property consistent with section … 193.461."*

See Rule 12D-51.001, Florida Administrative Code, for more information on the Agricultural Classified Use Appraisal Guidelines.

~~**NOTICE:**~~
~~**These Guidelines Are Out-of-Date**~~

~~The existing Florida Agricultural Classified Use Appraisal Guidelines were adopted in 1982 and are now out-of-date due to various changes in law. For example, in a 2007 decision, the U.S. Supreme Court held that appraisal is an "applied science" (not an art) and that appraisal methodology must be reviewed in ad valorem tax valuations. In another example, 2009 changes in sections 194.301 and 194.3015, F.S., substantially increased the legal standards for developing, reporting, and reviewing agricultural classified use valuations and also enacted the following additional determinative standards for agricultural classified use valuations: 1) compliance with professionally accepted appraisal practices; 2) avoidance of arbitrarily different appraisal practices within groups of comparable property within the same county; 3) avoidance of superseded case law; and 4) correct application of an appropriate appraisal methodology. Accordingly, the 1982 guidelines should not be used as a standard for agricultural classified use valuation development, reporting, or review. The Department has initiated the legal and professional research for updating the guidelines, which will include public notices and opportunities for public review and comment in an open and transparent process.~~

A copy of the 2024 Florida Agricultural Classified Use Real Property Appraisal Guidelines is available at:
https://floridarevenue.com/property/Documents/FLag.pdf

Pollution Control Devices

This property classification and its valuation are governed by Section 193.621, F.S., which provides the following:

* Pollution control devices installed in manufacturing or industrial plants or installations shall be valued as salvage;

* Demolition and reconstruction of part of such a facility for the purpose of reducing pollution, and which does not substantially increase the productivity of the facility, shall not increase the facility's assessed value;

* The property appraiser is authorized to seek a recommendation from the Department of Environmental Protection as to what constitutes pollution control; and

* The Department of Environmental Protection is authorized to promulgate rules concerning this classification.

"Salvage value" is defined in rules of the Department of Environmental Protection as follows:

"the estimated fair market value, if any, which may be realized upon the sale or other disposition of a pollution control facility when it can no longer be used for the purpose for which it was designed." See Rule 62-8.020, F.A.C.

Noncommercial Recreation and Conservation Lands

This property classification and its valuation are governed by Section 193.501, F.S.

To receive this classification, property must be subject to a conservation easement, qualified as environmentally endangered land, designated as conservation land, or used for outdoor recreational or park purposes.

If the covenant or conveyance extends for more than ten years, the property shall be valued considering no factors other than those relative to its value for the present use as restricted by the covenant or conveyance.

If the covenant has less than ten years left, the property will be valued at just value considering the restrictions imposed by the covenant.

Historic Property: Sections 193.503 and 193.505, F.S.

Under Subsection 193.503(5), F.S., historic property is to be assessed using the following factors only:

* Quantity and size of property;
* Condition of property;
* Present market value as historic property used for commercial or certain nonprofit purposes; and
* Income produced by the property.

The historic property addressed under Subsection 193.505(3), F.S., must be valued recognizing the nature and length of the restriction placed on the use of the property under the provisions of the conveyance or covenant.

High-Water Recharge Property

To allow this classification, the county must choose to adopt an ordinance providing for this classification and its valuation. See Subsections 193.625(1) and (5), F.S.

The county's ordinance must provide the formula for assessing property that qualifies for this classification. See Subsection 193.625(5)(b), F.S.

In counties that choose to adopt such ordinance, municipalities may also adopt an ordinance providing for classification and valuation of this property type. See Subsection 193.625(5)(d), F.S.

Working Waterfront Property (Classification Effective 2010)

The Florida Constitution sets forth criteria for classifying and valuing working waterfront property.

The provisions of Amendment 6, regarding working waterfronts, have been placed in the Florida Constitution at Article VII, Section (4)(j), effective for the 2010 assessment year. These provisions state as follows:

> *"(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:*
> *a. Land used predominantly for commercial fishing purposes.*
> *b. Land that is accessible to the public and used for vessel launches into waters that are navigable.*
> *c. Marinas and drystacks that are open to the public.*
> *d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.*
> *(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law."*

The constitutional amendment on working waterfront property is self-executing with authorization for the Legislature to elaborate by general law.

In the 2009 and 2010 sessions, the Legislature considered bills that did not pass but that would have contained guidance for classifying and valuing working waterfront property. These bills would have applied to the 2010 tax year if they had become law.

Amendment 6, creating classification of property used for working waterfronts, is effective for the 2010 year in the absence of legislation.

Renewable Energy Source Devices

* Legislation enacted in 2013 created section 193.624, F.S., to provide for assessment of a "renewable energy source device" installed on or after January 1, 2013, to new and existing residential real property.

* When determining the assessed value of real property used for residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered.

* This requirement is an exception to certain provisions relating to assessment of changes, additions, or improvements in sections 193.155 and 193.1554, F.S.

* This legislation is effective July 1, 2013 and applies to assessments and administrative reviews beginning in 2014. See Chapter 2013-77, Sections 1, 2, and 3, Laws of Florida (HB 277).

Note: Legislation enacted in 2017 amended section 193.624, F.S., to provide that, for nonresidential real property, 80 percent of the just value attributable to a renewable energy source device may not be considered in determining the assessed value of the property; this provision applies to devices installed on nonresidential property on or after January 1, 2018, except in a fiscally constrained county for which application for comprehensive plan amendment or planned unit development zoning is made by December 31, 2017. This change was effective July 1, 2017 and applies to assessments and administrative reviews beginning in 2018. See Chapter 2017-118, Sections 2 and 8, Laws of Florida (CS/SB 90).

Note: Legislation enacted in 2024 amended section 193.624(1), F.S., to add biogas (as defined in section 366.91, F.S.) as a type of energy that can be collected, transmitted, stored, or used as renewable energy. Created section 193.624(1)(n), F.S., to describe machinery integral to the collection and conversion of biogas. See Chapter 2024- xx, Section 5, Laws of Florida, (HB 7073), effective July 1, 2024. The amendments to section 193.624, F.S. first apply to the 2025 property tax roll. See Chapter 2024-158, Section 6, Laws of Florida, (HB 7073), effective July 1, 2024.

Competent Substantial Evidence for Establishing a Revised Classified Use Value

Competent substantial evidence for establishing a revised classified use value, as part of an administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:

1. Cumulatively meets the statutory criteria that apply to the classified use valuation of the petitioned property;

2. Tends to prove (is probative of) classified use value as of January 1 of the assessment year under review;

3. Is sufficiently relevant and credible to be accepted as adequate to support (legally justify) the conclusion reached; and

4. Otherwise meets all requirements of law.

The Administrative Review Process for Classified Use Valuations

Below is a sequence of general procedural steps for Boards and special magistrates to follow in administrative reviews of classified use valuations to fulfill the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(3), F.A.C.

This sequence of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

"The board or special magistrate shall not be required to make, at any time during a hearing, any oral or written finding, conclusion, decision, or reason for decision." See Rule 12D-9.025(9), F.A.C.

"The board or special magistrate has the discretion to determine whether to make such determinations during a hearing or to consider the petition and evidence further after the hearing and then make such determinations." See Rule 12D-9.025(9), F.A.C.

In following this sequence of steps, Boards or special magistrates must also meet the requirements of Rule 12D-9.025(1), F.A.C., which are the following:

* Review the evidence presented by the parties;

* Determine whether the evidence presented is admissible;

* Admit the evidence that is admissible; and

* Identify the evidence presented to indicate that it is admitted or not admitted.

The sequence of general procedural steps presented below is based on Rule 12D-9.027(3), F.A.C.

1. Consider the admitted evidence presented by the parties.

2. Identify and consider the statutory criteria that apply to the classified use valuation of the petitioned property.

3. Identify and consider the essential characteristics of the petitioned property based on the admitted evidence and the statutory criteria that apply to the classified use valuation of the property.

4. Identify the valuation methodology used by the property appraiser in developing the classified use valuation of the petitioned property, and consider this valuation methodology in light of the essential characteristics of the property.

5. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's methodology complies with the statutory criteria that apply to the classified use valuation of the property.

6. Determine whether the property appraiser's classified use valuation methodology is appropriate and whether the property appraiser established a presumption of correctness for the assessment.

a) The property appraiser's classified use valuation methodology is not appropriate and a presumption of correctness is not established unless the admitted evidence proves by a preponderance of the evidence that the property appraiser's classified use valuation methodology complies with the statutory criteria that apply to the classified use valuation of the property.

b) The property appraiser's classified use valuation methodology is appropriate and the presumption of correctness is established only when the admitted evidence proves by a preponderance of the evidence that the property appraiser's classified use valuation methodology complies with the statutory criteria that apply to the classified use valuation of the property.

7. If the Board or special magistrate determines that a presumption of correctness is established, the Board or special magistrate must then determine whether the admitted evidence proves by a preponderance of the evidence that:

a) The property appraiser's classified use valuation does not represent classified use value; or

b) The property appraiser's classified use valuation is arbitrarily based on valuation practices that are different from the valuation practices generally applied by the property appraiser to comparable property within the same county.

8. If the Board or special magistrate determines that one or both of the conditions specified under Step 7 exist, the presumption of correctness is overcome.

9. If the property appraiser does not establish a presumption of correctness, or if the presumption of correctness is overcome, the Board or special magistrate shall determine whether the hearing record contains competent, substantial evidence of classified use value that cumulatively meets the statutory criteria that apply to the classified use valuation of the property.

a) If the hearing record contains competent, substantial evidence for establishing a revised classified use value, the Board or an appraiser special magistrate shall establish a revised classified use value based only upon such evidence. In establishing a revised classified use value, the Board or special magistrate is not restricted to any specific value offered by one of the parties.

b) If the hearing record lacks competent, substantial evidence for establishing a revised classified use value, the Board or special magistrate shall remand the assessment to the property appraiser with appropriate directions for establishing classified use value. The property appraiser is required to follow these directions.

10. If the property appraiser establishes a presumption of correctness as described in Step 6 above and that presumption of correctness is not overcome as described in Step 7 above, the assessment stands.

PART 2

Statutory Criteria for Assessed Valuation of Limited Increase Property

The assessed value of certain types of properties can be less than their just value because of limitations and classifications under the Florida Constitution.

"Assessed value" means an annual determination of the value of:

* Homestead property as limited pursuant to Section 4(d), Article VII of the State Constitution (lesser of 3 percent or percentage change in consumer price index); or

* Non-homestead property as limited pursuant to Sections 4(g) and (h), Article VII of the State Constitution (10 percent).

Assessment Increase Limitation for Homestead Real Property

Beginning in 1995, for homestead property there is a limitation on the annual increase in assessed value that is equal to the lesser of 3 percent or the percent change in the consumer price index. See Rules 12D-8.0061 through 12D-8.0064, F.A.C.

Homestead real property shall be assessed at just value on the January 1 following a change of ownership. See Section 193.155, F.S.

Under Section 193.155(3)(a), F.S., a change of ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, with several enumerated exceptions. More information on this topic is in Module 9.

Note: Legislation enacted in 2024 amended section 193.155(4)(b)4., F.S., to provide this paragraph applies to changes, additions, or improvements commenced within five years after the January 1 following the damage or destruction of the homestead. This extends the period from the previous provision which was three years. See Chapter 2024-158, Section 4, Laws of Florida, (HB 7073), effective July 1, 2024.

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 Constitution. This involves property classified agricultural, high-water recharge, non-commercial recreational, conservation, and homestead limited increase property.

When ownership or control of the property changes, the property is subject to reassessment at just value.

A person or entity that owns non-homestead property subject to receiving the 10 percent assessment increase limitation under Sections 193.1554 or 193.1555, F.S., must notify the property appraiser of the county where the property is located of any change of ownership or control as defined in Sections 193.1554(5) and 193.1555(5), F.S. See section 193.1556, F.S.

Rule 12D-8.00659, F.A.C., (Notice of Change of Ownership or Control of Non-Homestead Property) contains detailed provisions explaining the change in ownership and control. Forms are included for the owner to notify the property appraiser as provided in sections 193.1554 and 193.1555, F.S.

NOTE: In Orange County Property Appraiser v. Sommers, 84 So.3d 1277 (Fla. 5th DCA 2012), the court held that when residential property changes from homestead to non-homestead, but ownership does not change, the ten percent cap for non-homestead property cannot be applied to the assessed value from the previous homestead cap. Rather, in the year following the change from homestead to non-homestead status, the new assessed value for the property (as non-homestead) must be equal to just value.

Then, the new assessed value must be the base to which the ten percent cap for non-homestead property can be applied in future years. This is also addressed in 2012 legislation. See Chapter 2012-193, Sections 6 and 7, Laws of Florida.

Note: Legislation enacted in 2021 amended section 193.1554(6)(b), F.S., to provide that changes, additions, or improvements that replace all or a portion of nonhomestead residential 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 nonhomestead property's assessed value as of the January 1 prior to the date on which the damage or destruction was sustained, when (a. the square footage of the property as changed or improved does not exceed 110 percent of the square footage of the property before the damage or destruction, or (b. the total square footage of the property as changed or improved does not exceed 1,500 square feet. See Chapter 2021-31, Sections 4 and 7, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable retroactively to assessments made on or after January 1, 2021.

Note: Legislation enacted in 2021 amended section 193.1555(6)(b), F.S., to provide that changes, additions, or improvements that replace all or a portion of real 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 nonresidential real property's assessed value as of the January 1 prior to the date on which the damage or destruction was sustained, when (a. the square footage of the property as changed or improved does not exceed 110 percent of the square footage of the property before the damage or destruction, or (b. the total square footage of the property as changed or improved does not exceed 1,500 square feet. See Chapter 2021-31, Sections 6 and 7, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable retroactively to assessments made on or after January 1, 2021.

Differences in Administration Between Sections 193.1554 and 193.1555, F.S.

The administration of Sections 193.1554 and 193.1555, F.S., is similar but has four main differences. These differences are:

1. For residential with nine or fewer dwelling units Section 193.1554, F.S., there is no change in ownership if the transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage.

   * This provision is not in Section 193.1555, F.S.

2. For residential with 10 units or more and nonresidential, Section 193.1555, F.S., property must be reassessed at just value if there is a "qualifying" improvement, meaning any substantially completed improvement that increases the just value of the property by at least 25 percent.

* "Improvement" is an addition or change to land or buildings that increases their value and is more than a repair or a replacement.

* This provision is not in Section 193.1554, F.S.

3. Under Section 193.1554, F.S., changes, additions, or improvements include improvements to common areas or other property that directly benefit the property.

* Such changes are assessed at just value and apportioned among the benefitting parcels.

* This provision is not in Section 193.1555, F.S.

Authority for Administrative Reviews of Assessed Valuations

It is clear under Section 194.301, F.S., amended by HB 521, that the Board or special magistrate may consider petitions on the current year assessed value. Section 194.301(1), F.S. states:

"… if the appraiser proves by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, ..."

Section 194.301(2)(a), F.S., states the Board or special magistrate may determine:

"… that the assessed value:
1. Does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property;…"

These provisions refer to the calculation of limited increase property and refer to the statutory criteria applicable to assessment of such properties. Also, see Rule 12D-9.027(3)(a), (b), and (d), F.A.C.

Thus, it is clear that a petitioner may appeal an assessed valuation for the current year under the statutory criteria pertaining to calculation of assessed value.

Competent Substantial Evidence for Establishing a Revised Assessed Value

Competent substantial evidence for establishing a revised assessed value, as part of an administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:

1. Cumulatively meets the statutory criteria that apply to the assessed valuation of the petitioned property;

2. Tends to prove (is probative of) assessed value as of January 1 of the assessment year under review;

3. Is sufficiently relevant and credible to be accepted as adequate to support (legally justify) the conclusion reached; and

4. Otherwise meets all requirements of law.

The Administrative Review Process for Assessed Valuations

Below is a sequence of general procedural steps for Boards and special magistrates to follow in administrative reviews of assessed valuations of limited increase property to fulfill the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(3), F.A.C.

This sequence of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

"The board or special magistrate shall not be required to make, at any time during a hearing, any oral or written finding, conclusion, decision, or reason for decision." See Rule 12D-9.025(9), F.A.C.

"The board or special magistrate has the discretion to determine whether to make such determinations during a hearing or to consider the petition and evidence further after the hearing and then make such determinations." See Rule 12D-9.025(9), F.A.C.

In following this sequence of steps, Boards or special magistrates must also meet the requirements of Rule 12D-9.025(1), F.A.C., listed following:

a) Review the evidence presented by the parties;

b) Determine whether the evidence presented is admissible;

c) Admit the evidence that is admissible; and

d) Identify the evidence presented to indicate that it is admitted or not admitted.

The sequence of general procedural steps presented below is based on Rule 12D-9.027(3), F.A.C.

1. Consider the admitted evidence presented by the parties.

2. Identify and consider the statutory criteria that apply to the assessed valuation of the petitioned property.

3. Identify and consider the essential characteristics of the petitioned property based on the admitted evidence and the statutory criteria that apply to the assessed valuation of the property.

4. Identify the valuation methodology used by the property appraiser in developing the assessed valuation of the petitioned property, and consider this valuation methodology in light of the essential characteristics of the property.

5. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's methodology complies with the statutory criteria that apply to the assessed valuation of the property.

6. Determine whether the property appraiser's assessed valuation methodology is appropriate and whether the property appraiser established a presumption of correctness for the assessment.

   a) The property appraiser's assessed valuation methodology is not appropriate and a presumption of correctness is not established unless the admitted evidence proves by a preponderance of the evidence that the property appraiser's assessed valuation methodology complies the statutory criteria that apply to the assessed valuation of the property.

   b) The property appraiser's assessed valuation methodology is appropriate and the presumption of correctness is established only when the admitted evidence proves by a preponderance of the evidence that the property appraiser's assessed valuation methodology complies with the statutory criteria that apply to the assessed valuation of the property.

7. If the Board or special magistrate determines that a presumption of correctness is established, the Board or special magistrate must then determine whether the admitted evidence proves by a preponderance of the evidence that:

   a) The property appraiser's assessed valuation does not represent assessed value; or

   b) The property appraiser's assessed valuation is arbitrarily based on valuation practices that are different from the valuation practices generally applied by the property appraiser to comparable property within the same county.

8. If the Board or special magistrate determines that one or both of the conditions specified under Step 7 exist, the presumption of correctness is overcome.

9. If the property appraiser does not establish a presumption of correctness, or if the presumption of correctness is overcome, the Board or special magistrate shall determine whether the hearing record contains competent, substantial evidence of

assessed value that cumulatively meets the statutory criteria that apply to the assessed valuation of the property.

a) If the hearing record contains competent, substantial evidence for establishing a revised assessed value, the Board or an appraiser special magistrate shall establish a revised assessed value based only upon such evidence. In establishing a revised assessed value, the Board or special magistrate is not restricted to any specific value offered by one of the parties.

b) If the hearing record lacks competent, substantial evidence for establishing a revised assessed value, the Board or special magistrate shall remand the assessment to the property appraiser with appropriate directions for establishing assessed value. The property appraiser is required to follow these directions.

10. If the property appraiser establishes a presumption of correctness as described in Step 6 above and that presumption of correctness is not overcome as described in Step 7 above, the assessment stands.

Module 8:
Administrative Reviews of
Tangible Personal Property Just Valuations

Training Module 8 addresses the following topics:

- Statutory Law Beginning in 2009 (See HB 521)
- Standard of Proof for Administrative Reviews
- Scope of Authority for Administrative Reviews
- Legal Limitations on Administrative Reviews
- The Florida Tangible Personal Property Appraisal Guidelines
- Florida Information on Appraisal Development
- Definition of Tangible Personal Property (TPP)
- Exemptions for Tangible Personal Property
- Requirement for Taxpayers to File TPP Returns
- 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
- Operation of the Eighth Criterion Under Florida Law
- The Eighth Criterion in Reviews of Tangible Personal Property

Learning Objectives

After completing this training module, the learner should be able to:

- Identify the 2009 changes enacted in statutory law (HB 521)
- Distinguish between who does appraisal development and who does NOT
- Identify legal provisions on the Tangible Personal Property Appraisal Guidelines
- Identify legal provisions that represent limitations on the discretion of property appraisers
- Recognize that the factor in Section 193.011(8), F.S., must be properly considered in the just valuation of tangible personal property (TPP)
- Recognize the four components of the definition of personal property
- Identify how the Florida Supreme Court has addressed intangible personal property in the just valuation of tangible personal property

- Recognize the requirement that personal property types other than TPP must be excluded from just valuations of TPP
- Distinguish between appraisal development and administrative reviews
- Recognize and apply the scope of authority for administrative reviews
- Identify the items that a Board or special magistrate may consider in addition to admitted evidence
- Recognize and apply the definition of tangible personal property (TPP)
- Identify the requirements for filing a TPP return (Form DR-405)
- Recognize the types of information required on a filed return (Form DR-405)
- Identify how the property appraiser may use a filed TPP return
- Recognize the link between the requirement to file a TPP return with the property appraiser and the right to file a petition with the Board
- Identify the eight factors of just valuation in Section 193.011, F.S.
- Recognize the legal standards for consideration of the just valuation factors
- Identify the provisions of Section 193.016, F.S., regarding the property appraiser's consideration of the previous year's Board-adjusted assessment
- Recognize how the Florida Supreme Court has addressed Section 193.016, F.S.
- Identify the applicable standard of proof, its definition, and how it is applied
- Identify standards of proof that do NOT apply in administrative reviews
- Recognize that a petitioner is NOT required to present an opinion of value
- Understand the order of presentation of evidence
- Identify and apply the steps for evaluating evidence in administrative reviews
- Recognize and apply the provisions for ruling on the admissibility of evidence
- Identify and apply the definitions of relevant evidence and credible evidence
- Recognize and apply the standards for determining the sufficiency of evidence
- Identify types of information that are NOT sufficient evidence for establishing a presumption of correctness
- Recognize the requirements for establishing a presumption of correctness
- Recognize the requirements for overcoming a presumption of correctness
- Identify the alternative actions required when a presumption of correctness was not established, or was established but later was overcome
- Identify and apply the elements of the definition of competent substantial evidence for establishing a revised assessment
- Recognize the conditions under which a Board or special magistrate is required to establish a revised just value
- Identify legal limitations on administrative reviews
- Apply the sequence of general procedural steps for administrative reviews of just valuations
- Identify when the Board or special magistrate is required or is NOT required to make determinations such as findings, conclusions, or decisions
- Recognize that the factor in Section 193.011(8), F.S., must be properly considered in administrative reviews of just valuations of tangible personal property, regardless of whether an actual sale of the property has occurred

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

accepted appraisal practices. If the record lacks such evidence, the matter must be remanded to the property appraiser with appropriate directions from the value adjustment board or the court, and the property appraiser must comply with those directions.

(c) If the revised assessment following remand is challenged, the procedures described in this section apply.

(d) If the challenge is to the classification or exemption status of the property, there is no presumption of correctness and the party initiating the challenge has the burden of proving by a preponderance of the evidence that the classification or exempt status assigned to the property is incorrect.

Section 2.

(1) It is the express intent of the Legislature that a taxpayer shall never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment. All cases establishing the every-reasonable-hypothesis standard were expressly rejected by the Legislature on the adoption of chapter 97-85, Laws of Florida. It is the further intent of the Legislature that any cases published since 1997 citing the every-reasonable-hypothesis standard are expressly rejected to the extent that they are interpretative of legislative intent.

(2) This section is intended to clarify existing law and apply retroactively.

Section 3.

This act shall take effect upon becoming a law and shall first apply to assessments in 2009.
Approved by the Governor June 4, 2009.
Filed in Office Secretary of State June 4, 2009.
Ch. 2009-121 LAWS OF FLORIDA Ch. 2009-121

This law is now in effect and applies to the administrative review of assessments beginning with 2009 assessments.

* Procedural steps for implementing this 2009 legislation for administrative reviews of just valuations are presented later in this training module.

Board attorneys and special magistrates are responsible for ensuring that this important legislation is implemented for all administrative reviews of assessments.

This 2009 legislation lowered the standard of proof for assessment challenges, greatly increased the level of diligence for developing and reporting just valuations, and added the following four new determinative standards for developing, reporting, and reviewing just valuations:1) compliance with professionally accepted appraisal practices; 2) avoidance of arbitrarily different appraisal practices within groups of comparable property within the same county; 3) avoidance of superseded case law; and 4) correct application of an appropriate appraisal methodology. These changes are explained in a following section titled "The Seven Overarching Standards for Valid Just Valuations."

The law now provides a lower standard of proof, called "preponderance of the evidence," for determining whether the assessment is incorrect.

* "Preponderance of the evidence" is a standard (level) of proof that means "greater weight of the evidence" or "more likely than not."

In determining whether the assessment is incorrect, Boards and special magistrates must not use any standard of proof other than the preponderance of the evidence standard, as provided in Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

Higher standards of proof no longer apply. The higher standard of proof called "clear and convincing evidence" no longer applies in the administrative review of assessments and must not be used by Boards or special magistrates. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

"It is the express intent of the Legislature that a taxpayer shall never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment." See Subsection 194.3015(1), F.S., as created by Chapter 2009-121, Laws of Florida (House Bill 521).

Standard of Proof for Administrative Reviews

In administrative reviews, Boards or special magistrates must consider admitted evidence and then compare the weight of the evidence to a "standard of proof" to make a determination on an issue under review.

Generally, the term "evidence" means something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of a disputed fact. See *Black's Law Dictionary, Eighth Edition*, page 595.

"Standard of proof" means the level of proof needed by the Board or special magistrate to reach a particular conclusion. See Rule 12D-9.027(5), F.A.C.

The standard of proof that applies in administrative reviews is called "preponderance of the evidence," which means "greater weight of the evidence." See Rule 12D-9.027(5), F.A.C.

Also, the Florida Supreme Court has defined "preponderance of the evidence" as "greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So.2d 276 (Fla. 2000).

"Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in the case. See Florida Standard Civil Jury Instructions, approved for publication by the Florida Supreme Court.

The Board or special magistrate must determine whether the admitted evidence is sufficiently relevant and credible to reach the "preponderance of the evidence" standard of proof.

This standard of proof is the scale by which the Board or special magistrate measures the weight (relevance and credibility) of the admitted evidence in making a determination.

Scope of Authority for Administrative Reviews

The administrative review of just valuations is performed by Boards or special magistrates under Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10, and 12D-16, F.A.C.; and other provisions of Florida law.

The administrative review process performed by Boards and special magistrates is separate and different from the mass appraisal development process performed by property appraisers.

In administrative reviews, Boards and special magistrates are not authorized to perform appraisal development and must not perform appraisal development.

In administrative reviews, Boards and special magistrates are not authorized to perform any independent factual research into attributes of the subject property or any other property.

Boards and special magistrates must follow the provisions of law on the administrative review of assessments. See Chapter 194, Parts 1 and 3, F.S.; Rule Chapters 12D-9, 12D-10, and 12D-16, F.A.C.; and other provisions of Florida law.

In establishing revised just values when required by law, Boards and special magistrates are bound by the same standards and practices as property appraisers. See Rule 12D-10.003(1), F.A.C., treated favorably in Bystrom v. Equitable Life Assurance Society, 416 So.2d 1133 (Fla. 3d DCA 1982), and see Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

* However, when observing this requirement, Boards and special magistrates must act within their scope of authority.

The effective date of administrative review is January 1 each year, and the property interest to be reviewed is the unencumbered fee simple estate.

The Board or special magistrate has no authority to develop original just valuations of property and may not take the place of the property appraiser, but shall revise the assessment when required under Florida law. See Rule 12D-10.003(1), F.A.C., and Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

* See Simpson v. Merrill, 234 So.2d 350 (Fla. 1970), stating that a court may not take the place of the property appraiser but may reduce the assessment.

* Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding that the determination of the weight to be accorded evidence rests upon the trial judge, as trier of facts, and if competent substantial evidence is introduced demonstrating the assessment to be erroneous, the judge may reduce that assessment.

The Board or special magistrate is required to revise the assessment under the conditions specified in Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521). These conditions are described in detail later in this module.

"In establishing a revised just value, the board or special magistrate is not restricted to any specific value offered by one of the parties." See Rule 12D-9.027(2)(b)3.a., F.A.C.

* Also, see Blake v. Farrand Corporation, Inc., 321 So.2d 118 (Fla. 3d DCA 1975), holding that the reviewing judge could arrive at a value that was different from either of the values presented by the parties when the judge's value was based on competent substantial evidence in the record.

The Board or special magistrate is authorized to make calculations, and to make an adjustment to the property appraiser's value based on competent substantial evidence of just value in the record. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977), stating that when the record contains competent substantial evidence of value the court may make necessary value calculations or adjustments based on such evidence.

If the hearing record does not contain competent substantial evidence of just value, the Board or special magistrate cannot substitute its own independent judgment. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521), and see Cassady v. McKinney, 343 So.2d 955 (Fla. 2nd DCA 1977), stating that in the absence of competent substantial evidence of value the court cannot substitute its own independent judgment.

The Board or special magistrate has no authority to adjust assessments across-the-board. Their authority to review just valuations is limited to the review of individual petitions filed. See Spooner v. Askew, 345 So.2d 1055 (Fla. 1976).

The Board has the limited function of reviewing and correcting individual assessments developed by the property appraiser. See Bath Club, Inc. v. Dade County, 394 So.2d 110 (Fla. 1981).

The Board has no authority to review, on its own volition, a decision of the property appraiser to deny an exemption. See Redford v. Department of Revenue, 478 So.2d 808 (Fla. 1985).

"The powers, authority, duties and functions of the board, insofar as they are appropriate, apply equally to real property and tangible personal property (including taxable household goods)." See Rule 12D-10.003(2), F.A.C.

In administrative reviews, Boards and special magistrates are not authorized to consider any evidence except evidence properly presented by the parties and properly admitted into the record for consideration. See Rule 12D-9.025(4)(a), F.A.C.

In addition to admitted evidence, Boards and special magistrates are authorized to consider only the following items in administrative reviews.

1. Legal advice from the Board legal counsel;

2. Information contained or referenced in the Department's Uniform Policies and Procedures Manual and Accompanying Documents;

3. Information contained or referenced in the Department's training for value adjustment boards and special magistrates; and

4. Professional texts that pertain only to professionally accepted appraisal practices that are not inconsistent with Florida law.

Legal Limitations on Administrative Reviews

No evidence shall be considered by the Board or special magistrate except when presented during the time scheduled for the petitioner's hearing, or at a time when the petitioner has been given reasonable notice. See Subsection 194.034(1)(c), F.S. Also, see Rule 12D-9.025(4)(a), F.A.C.

Other provisions of law address the responsibilities of petitioners and property appraisers that may affect the review and consideration of evidence at a hearing.

* The Board or special magistrate must consult with the Board legal counsel on any questions about the review and consideration of evidence.

In administrative reviews, the Board or special magistrate shall not consider the tax consequences of the valuation of a specific property. See Rule 12D-10.003(1), F.A.C.

The Board or special magistrate has no power to grant relief by adjusting the value of a property on the basis of hardship of a particular taxpayer. See Rule 12D-10.003(1), F.A.C.

Unless the provisions of Section 193.016, F.S., apply, a just valuation challenge must stand or fall on its own validity, unconnected with the just value of any prior or subsequent year. See Keith Investments, Inc. v. James, 220 So.2d 695 (Fla. 4th DCA 1969); Also, see Dade County v. Tropical Park, Inc., 251 So.2d 551 (Fla. 3rd DCA 1971).

Unless the provisions of Section 193.016, F.S., apply, the prior year's just value is not competent evidence of just value in the current year, even when there is no evidence showing a change in circumstances between the two dates of assessment. See Simpson v. Merrill, 234 So.2d 350 (Fla. 1970).

An appraisal report shall not be submitted as evidence in a value adjustment board proceeding in any tax year in which the person who performed the appraisal serves as a special magistrate to that county value adjustment board for the same tax year. Accordingly, in that tax year the board and any special magistrate in that county shall not admit such appraisal report into evidence and shall not consider any such appraisal report. See Rule 12D-9.025(4)(g), F.A.C.

The Florida Tangible Personal Property Appraisal Guidelines

Below are provisions from Section 195.032, Florida Statutes, describing the Tangible Personal Property Appraisal Guidelines.

1. *"The standard measures of value shall provide guidelines for the valuation of property and methods for property appraisers to employ in arriving at the just valuation of particular types of property consistent with section 193.011..."*

2. *"The standard measures of value shall assist the property appraiser in the valuation of property and be deemed prima facie correct, but shall not be deemed to establish the just value of any property."*

See Rule 12D-51.002, Florida Administrative Code, for more information on the Tangible Personal Property (TPP) Appraisal Guidelines.

NOTICE:

With the Exceptions Noted Below,These Guidelines Are Out-of-Date

The existing Florida Tangible Personal Property Appraisal Guidelines were adopted in 1997 and, with the exceptions noted below, are now out-of-date due to various changes in law. For example, in a 2007 decision, the U.S. Supreme Court held that appraisal is an "applied science" (not an art) and that appraisal methodology must be reviewed in ad valorem tax valuations. In another example, 2009 changes in sections 194.301 and 194.3015, F.S., substantially increased the legal standards for developing, reporting, and reviewing just valuations and also enacted the following additional determinative standards for just valuations: 1) compliance with professionally accepted appraisal practices; 2) avoidance of arbitrarily different appraisal practices within groups of comparable property within the same county; 3) avoidance of superseded case law; and 4) correct application of an appropriate appraisal methodology. Accordingly, with the exceptions noted below, the 1997 guidelines should not be used as a standard for just valuation development, reporting, or review. The Department has initiated the legal and professional research for updating the guidelines, which will include public notices and opportunities for public review and comment in an open and transparent process.

TPP Guideline Portions Excluded from the Notice Above

The existing TPP Guidelines include attachments. Of these, Attachments B, C, D, F, and H, along with related narrative described below, are excluded from the notice above. A post-2009 Florida Appellate Court decision (March 1, 2019) found the use of appraisal information from Attachments B, C, and D to be consistent (to a limited extent) with professionally accepted appraisal practices; the Court qualified this finding by stating it is not part of the Court's holding. Also, Attachments F and H in the existing TPP guidelines are duly adopted forms that are up-to-date. Further, the narrative in the 1997 guidelines, relating to the use of Attachments B, C, D, F, and H, is excluded from the notice above to the extent such narrative is consistent with professionally accepted appraisal practices and appropriate appraisal methodologies. In the existing guidelines, such narrative is on pages 35, 36, 40-43, and 45 (relating to the use of Attachments B, C, and D) and on pages 31, 32, 34, 44, and 45 (relating to the use of Attachments F and H). The exceptions described above are subject to change as the process of updating the TPP guidelines evolves and more information becomes available.

More information on these 2009 enactments is presented in a following section titled "The Seven Overarching Standards for Valid Just Valuations."

A copy of the1997 TPP guidelines is available at:
https://floridarevenue.com/property/Documents/TPPGuidelines.pdf

Florida Information on Appraisal Development

In the context of Florida ad valorem tax law, appraisal development is the act, by an appraiser, of applying the appraisal process to arrive at valid just valuations.

More information on Florida's standards for appraisal development is in a following section titled "The Seven Overarching Standards for Valid Just Valuations."

Section 4, Article VII, of the Florida Constitution, requires a just valuation of all property for ad valorem taxation, with certain conditions.

Florida's constitution has "*delegated to the Legislature the responsibility for deciding the specifics of how that 'just valuation' would be secured*." Sunset Harbour Condominium Ass'n v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Collier County v. State, 733 So.2d 1012, 1019 (Fla. 1999).

The Florida Legislature has effectuated the constitutional requirement for just valuations by specifying just valuation standards in several statutes, as explained below in a section titled "The Seven Overarching Standards for Valid Just Valuations."

Regarding section 193.011, in 1963 the Legislature enacted the initial version of the first seven just valuation factors, effective January 1, 1964. See Chapter 63-250, Laws of

Florida, creating Section 193.021, F.S., which was re-numbered in 1969 as Section 193.011, F.S., by Chapter 69-55, Laws of Florida.

In 1965, the Florida Supreme Court held that just value was synonymous with fair market value and defined fair market value as: *"the amount a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell."* See Walter v. Schuler, 176 So.2d 81 (Fla. 1965).

* Neither the term "fair market value" nor the term "market value" appears in the Florida Constitution. The term "just valuation" appears in the constitution once and the term "just value" appears in the constitution a total of 22 times, all of which terms appear in Article VII pertaining to the valuation of property for ad valorem taxation.

* NOTE: The eighth just valuation criterion did not exist at the time of Walter v. Schuler. The Legislature can override decisional law. See Dept. of Environmental Protection v. Contractpoint Florida Parks, 986 So.2d 1260, 1269 (Fla. 2008).

Then, in 1967, the legislature added the eighth just valuation criterion (net proceeds of sale) as a new Subsection 193.021(8), Florida Statutes. See Chapter 67-167, Laws of Florida, creating Subsection 193.021(8), F.S., which was re-numbered in 1969 as Subsection 193.011(8), F.S., by Chapter 69-55, Laws of Florida.

Subsection 193.011(8), F.S., generally known as the "eighth criterion," was last amended in 1979 and is presented below in its entirety.

"The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property."

* The eighth criterion must be properly considered in the just valuation of tangible personal property. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

NOTE: More information on the eighth criterion is presented later in this section and in the last two sections of this module.

Florida law defines real property as land, buildings, fixtures, and all other improvements to land. See Subsection 192.001(12), F.S.

Florida law defines personal property as being divided into the following four categories: 1) household goods, 2) intangible personal property, 3) inventory, and 4) tangible personal property. See Subsection 192.001(11), F.S.

Subsection 193.011(8), F.S., states the following in pertinent part: *"When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property."*

The eighth criterion provides for the deduction of personal property in arriving at net proceeds of sale of real property, but does not specifically address the deduction of personal property to arrive at net proceeds of sale of tangible personal property.

* However, the Florida Supreme Court found that it is unconstitutional for a property appraiser to include intangible personal property value in the just valuation of tangible personal property. See Havill v. Scripps Howard Cable Co., 742 So.2d 210 (Fla. 1998).

* Given this decision and the statutory definition of personal property that includes intangible personal property, the personal property component of the eighth criterion must be properly considered in the just valuation of tangible personal property.

The just value of personal property types other than tangible personal property must be excluded from just valuations of tangible personal property.

Definition of Tangible Personal Property (TPP)

"Tangible personal property' means all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself. 'Construction work in progress' consists of those items of tangible personal property commonly known as fixtures, machinery, and equipment when in the process of being installed in new or expanded improvements to real property and whose value is materially enhanced upon connection or use with a preexisting, taxable, operational system or facility. Construction work in progress shall be deemed substantially completed when connected with the preexisting, taxable, operational system or facility. For the purposes of tangible personal property constructed or installed by an electric utility, construction work in progress shall be deemed substantially completed upon the earlier of when all permits or approvals required for commercial operation have been received or approved, or 1 year after the construction work in progress has been connected with the preexisting, taxable, operational system or facility. Inventory and household goods are expressly excluded from this definition." See Subsection 192.001(11)(d), F.S.

Note: Legislation enacted in 2024 amended section 192.001(11)(d), F.S., to add that for the purpose of tangible personal property constructed or installed by an electric utility, construction work in progress shall not be deemed substantially completed unless all permits or approvals required for commercial operation have been received or

approved. See Chapter 2024-158, Section 1, Laws of Florida (HB 7073). Section 192.001(11)(d), F.S applies retroactively to January 1, 2024. See Chapter 2024-158, Section 2, Laws of Florida, (HB 7073), effective upon becoming a law May 7, 2024.

Exemptions for Tangible Personal Property

Chapter 196, Florida Statutes, exempts certain property from the TPP tax.

Exempt property may be subject to TPP return filing requirements.

TPP may be exempt only if it meets the requirements for an exemption set forth in Chapter 196, Florida Statutes.

NOTE: For those interested, more information on exemptions for tangible personal property is presented in Module 9 of this training. However, appraiser special magistrates are not required to complete Module 9 of this training.

Requirement for Taxpayers to File TPP Returns

A TPP return (Form DR-405) is a Florida Department of Revenue form that owners of certain TPP are required by law to complete and file with the property appraiser each year by April 1st, unless a lawful extension has been granted.

Form DR-405 can be viewed on the Department's website at the following link: https://floridarevenue.com/property/Documents/dr405.pdf

Owners of TPP valued at $25,000 or less may receive a filing waiver from the property appraiser upon filing an initial return.

Florida law provides for financial penalties when TPP returns are not lawfully filed. See Sections 193.072 and 196.183, F.S.

The TPP return contains information that the property appraiser may consider in arriving at just value.

The TPP return is the property appraiser's primary data collection method for TPP characteristics.

Other data collection methods, such as physical inspections, may be used when necessary.

A TPP assessment may not be contested with the Board unless the required TPP return was timely filed with the property appraiser. The term "timely filed" means filed by the deadline established in section 193.062, F.S., or before the expiration of any extension granted under section 193.063, F.S. If notice is mailed pursuant to section 193.073(1)(a), F.S., a complete return must be submitted under section 193.073(1)(a), F.S., for the assessment to be contested. See Subsection 194.034(1)(j), F.S.

The Eight Factors of Just Valuation in Section 193.011, F.S.

After the landmark 2009 legislation, the eight just valuation factors in section 193.011 are now incorporated into section 194.301 in three places and must be applied together with the other just valuation standards in sections 194.301 and 194.3015, F.S., and in other applicable law, so that each standard is given lawful meaning.

Section 193.011, Florida Statutes, provides the following on just valuation.

***"Factors to consider in deriving just valuation**. – In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:*

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

(6) The condition of said property;

(7) The income from said property; and

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or

any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property."

Section 193.011 is now part of the determinative just valuation standards provided in sections 194.301 and 194.3015 and in other applicable law, as explained in the next section titled "The Seven Overarching Standards for Valid Just Valuations."

The Seven Overarching Standards for Valid Just Valuations

The 2009 statutory changes in sections 194.301 and 194.3015, F.S., greatly increased the standard of care (level of expertise and diligence) for the county appraiser's development and reporting of just valuations for ad valorem taxation in Florida.

The 2009 changes also established four additional, determinative statutory standards for valid just valuations, as follows: 1) compliance with professionally accepted appraisal practices, 2) avoidance of arbitrarily different appraisal practices within groups of comparable property within the same county, 3) avoidance of superseded case law, and 4) correct application of an appropriate appraisal methodology.

Under Florida's current legal framework for just valuations, there are seven overarching standards for valid just valuations. These seven standards must be read and applied together, so that each is given appropriate and lawful meaning in light of the facts.

Compliance with these seven standards requires the appraiser to correctly apply the appraisal process and "…*this important function requires expertise, diligence, sound judgment, and objectivity*..." See *Uniform Appraisal Standards for Federal Land Acquisition 2016* (Appraisal Foundation), page 203.

These seven overarching standards are listed and described below.

1. **Compliance with Professionally Accepted Appraisal Practices for Appraisal Development and Appraisal Reporting**

The section 194.301 standard of professionally accepted appraisal practices applies to the entire appraisal process that includes both appraisal development and appraisal reporting, each of which are addressed separately below.

Professionally accepted appraisal practices require appraisers to recognize and comply with current laws and regulations that apply to the appraiser or to the appraisal assignment. See Competency Rule, *Uniform Standards of Professional Appraisal Practice, 2024 ~~2020-2021~~ Edition* (USPAP), page 13. ~~11.~~

Compliance with professionally accepted appraisal practices encompasses compliance with all other law comprising the seven overarching standards.

Professionally accepted appraisal practices comprise a voluminous set of practices set forth in thousands of pages of professional appraisal references. The current edition of USPAP is a set of standards consisting of 62 ~~58~~ pages that address both appraisal development and appraisal reporting ~~review~~ for all types of property.

Thus, the two are not the same thing because the professionally accepted appraisal practices standard is much more extensive and detailed than USPAP.

While USPAP is an indispensable (but not exhaustive) ~~a useful~~ source of information on professionally accepted appraisal practices (including appraisal development and appraisal reporting), USPAP is not a substitute for Florida's statutory standards for valid just valuations. ~~it not a substitute for such practices.~~

Key Elements of Appraisal Development Under Professionally Accepted Appraisal Practices

In the context of Florida ad valorem tax law, appraisal development is the act, by an appraiser, of applying the appraisal process to arrive at valid just valuations.

~~"Relevant characteristics" is a core appraisal term defined as: "*features that may affect a property's value or marketability such as legal, economic, or physical characteristics*." See Definitions, *Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition* (Washington, DC: The Appraisal Foundation), page 5.~~

Under professionally accepted appraisal practices, the three categories of appraisal data that must be applied in the appraisal process are: legal, physical, and economic. See Standard 5, Mass Appraisal Development, *Uniform Standards of Professional Appraisal Practice, 2024 ~~2020-2021~~ Edition*, page 37. ~~33.~~ Also, see section 193.1142(1)(c)2., F.S.

Appraisers are required *"to use due diligence and due care*." See Competency Rule, *Uniform Standards of Professional Appraisal Practice, 2024 ~~2020-2021~~ Edition*, page 13. ~~11.~~

An appraiser's valuation must be "*based on careful scrutiny of all the data available*." See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007).

Appraisers have the "…*responsibility to obtain knowledge of all pertinent facts and circumstances that can be acquired with diligent inquiry and search.*" See *Uniform Appraisal Standards for Federal Land Acquisition 2016* (Appraisal Foundation), page 204.

"*The appraiser must be diligent in data collection and competently apply the accepted methods and techniques of the appraisal profession*…" See *Uniform Appraisal Standards for Federal Land Acquisition 2016* (Appraisal Foundation), page 203.

For appraisal evidence to support a just valuation, the evidence must be relevant to the subject property and must satisfy each of the just valuation standards provided in law.

The three approaches to just valuation are: 1) the cost less depreciation approach, 2) the sales comparison approach, and 3) the income capitalization approach.

- Each of the three approaches has variants, depending on: 1) the legal, physical, and economic attributes of the subject property; 2) the availability of appraisal data; and 3) the appropriate appraisal methodology.

Generally, property appraisers use mass appraisal techniques to develop just valuations each year, but property appraisers may also use single-property appraisal techniques.

When properly applied in compliance with all requirements of law, both mass appraisal and single-property appraisal are professionally accepted appraisal practices.

It is implicit in mass appraisal that, even when properly specified and calibrated mass appraisal models are used, some individual value conclusions will not meet standards of reasonableness, consistency, and accuracy. See Standard 5, Mass Appraisal Development, *Uniform Standards of Professional Appraisal Practice, 2024 ~~2020-2021~~ Edition,* page 40. ~~37.~~

Regardless of the appraisal approach or technique used to develop a particular just value, the approach, technique, and value are subject to review to determine whether the appraisal process complies with all applicable legal standards.

Summarized below are some key elements of the standard of care (level of expertise and diligence) for development of just valuations for Florida ad valorem tax purposes:

- Identify the legal, physical, and economic attributes of the subject property
- Identify and comply with all applicable law, and avoid superseded case law
- Determine the required data, research, and analysis, and identify the professionally accepted appraisal practices and an appropriate appraisal methodology
- Collect, analyze, and maintain legal, physical, and economic data as necessary for credible valuations that comply with applicable law
- Apply due diligence and due care in the appraisal process, avoid carelessness and negligence, and avoid significant errors of commission and omission
- Comply with each of the 193.011 factors consistent with all other just valuation standards (avoid cursory consideration of 193.011 factors, correctly apply the factors needed for a credible and lawful just valuation, and develop professionally accepted reasons for not applying any factor not applied)
- Avoid appraisal practices that are arbitrarily different from the appraisal practices applied to other comparable property in the same county

- Correctly apply an appropriate appraisal methodology that complies with professionally accepted appraisal practices and each of the other legal standards

- Reconcile data and analyses used, and correctly employ quality review procedures

Key Elements of Appraisal Reporting Under Professionally Accepted Appraisal Practices

Professionally accepted appraisal practices require communicating, or reporting, the appraisal process used to develop the just valuation. An appraisal report is any communication, written or oral, about the appraisal process applied in just valuations.

Appraisal reporting is part of the appraisal process and is how the appraiser demonstrates compliance with each of the just valuation standards provided by law.

Conclusory statements made by an appraiser reporting an appraisal process are not sufficient and are not credible. See Scripps Howard Cable Co. v. Havill, 665 So.2d 1071, 1077 (Fla. 5th DCA 1995), approved, 742 So.2d 210 (Fla. 1998).

The text, *Fundamentals of Mass Appraisal*, published in 2011 by the International Association of Assessing Officers, pages 4-5, lists appraisal reporting as part of the appraisal process and then states in pertinent part:

"Professional standards, however, require all appraisers to work systematically, document their work, communicate their opinions of value clearly, and behave ethically."

The text, *The Appraisal of Real Estate, Fifteenth Edition*, published in 2020 by the Appraisal Institute, pages 31 and 37, lists appraisal reporting as part of the appraisal process and then states in part as follows:

"The report of the value opinion or conclusion addresses the data analyzed, the methods applied, and the reasoning that led to the value conclusion and does so in a manner that enables the intended users to properly understand the appraiser's findings and conclusions. The objective of the appraisal report is to communicate the valuation process with sufficient supporting evidence and logic to ensure that the assignment results are credible for the intended use."

Standard 6, Mass Appraisal Reporting, *Uniform Standards of Professional Appraisal Practice, 2024 ~~2020-2021~~ Edition*, page 42, ~~39,~~ requires appraisers to explain the exclusion of any of the three approaches to value and to:

"*provide sufficient information to enable the client and intended users to have confidence that the process and procedures used conform to accepted methods and result in credible value conclusions;*"

A recent trial court judgment states as follows regarding appraisal reporting:

"*The 2009 legislation requires the Court to determine whether the appraiser used an appropriate methodology in making the assessment. To allow the Court to make this determination, the property appraiser must present sufficient evidence that describes the appraisal methodology and explains how and why it was applied in valuing the Subject Property. Under section 194.301(1), the appraiser has the burden of going forward and presenting testimonial and documentary evidence explaining how the appraiser satisfied each of the just valuation criteria*."
See Dillards, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).

Summarized below are some key elements of the standard of care (level of expertise and diligence) for just valuation reporting:

- Must provide meaningful disclosure of procedures applied in the appraisal process
- Must be relevant to the legal, physical, and economic attributes of the property, each of the applicable legal criteria, and the appraisal process
- Must be credible in the context of Florida ad valorem property tax appraisal
- Must be clear and accurate to enable intended users to understand the appraisal process
- Must include explanations and reasons, addressing each of the valuation approaches and each of the applicable legal criteria, regarding what was actually done and how and why, in developing the just value
- Must provide lawful and professionally accepted explanations and reasons for not applying a legal criterion or not applying an appraisal approach
- Must be sufficient for intended users to understand how and why the just value was developed via the methodology used
- Must avoid misleading statements, conclusory statements, and superseded case law

2. Compliance with Each of the Just Valuation Factors in Section 193.011, F.S.

After the landmark 2009 legislation, the eight just valuation factors in section 193.011 are now incorporated into section 194.301 in three places.

- These eight just valuation factors must now be applied together with the other just valuation standards in sections 194.301 and 194.3015, F.S., and in other applicable law, so that each standard is given professionally accepted and lawful meaning.
- The method of just valuation and the weight to be given to each of the section 193.011 factors is now governed solely by: 1) the legal, physical, and economic

characteristics of the subject property; 2) the four additional determinative standards in sections 194.301 and 194.3015, F.S.; and 3) all other applicable law.

- In just valuations under current law, it is necessary to actually apply the section 193.011 factors that are appropriate for compliance with the four new determinative standards in sections 194.301 and 194.3015 and all other applicable law.

- Under the dictates of section 194.301 and 194.3015, F.S., for any section 193.011 factor not applied in a particular just valuation, the appraiser must report a clear, logical, fact-based, and professionally accepted reason for excluding the factor.

Pre-2009 just valuation case law is replete with obsolete statements indicating a much lower level of expertise and diligence (standard of care) for developing and reporting just valuations than required by current law, and these obsolete statements must be avoided.

Just valuation evidence, including evidence intended to show the property appraiser's compliance with each of the section 193.011 factors, "***must be real, material, pertinent, and relevant evidence**, as opposed to ethereal, metaphysical, speculative, theoretical, or hypothetical, and **it must have definite probative value***." See Singh v. Walt Disney Parks, --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).

The legal, physical, and economic characteristics of the subject property must be reflected in the appraisal data applied for the eight factors in section 193.011 and must be applied in all just valuation approaches.

The appraiser's compliance with legal standards, including the just valuation factors in section 193.011, must be demonstrated in the appraisal data, analyses, practices, and methods used to develop and report just valuations.

Appraisal approaches (methods), the application of legal standards including the section 193.011 factors, and the validity of resulting values are interconnected and cannot logically be separated.

In administrative reviews, the overarching legal standards should be applied in determining whether the appraisal methodology used in making a value assessment is appropriate under the circumstances and this, in turn, should be applied in determining whether the value assessment is valid.

Below are two examples of how court decisions have correctly applied the section 193.011 factors in reviewing appraisal methodology and resulting just valuations.

- 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:

"*The reliability of sales ratio statistics depends on unsold parcels being appraised in the same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio results, possibly rendering them useless. Equally important, selective reappraisal of sold parcels ("sales chasing") is a serious violation of basic appraisal uniformity and is highly unprofessiona*l."

Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).

4. Avoidance of Superseded Case Law.

In 2009, the Florida Legislature made crystal clear its intent to supersede case law that is inconsistent with legislative enactments in sections 194.301 and 194.3015, F.S.

The 2009 enactments re-engineered the development, reporting, and review of just valuations in Florida. Yet, in some cases, these major statutory changes have not been applied in practice and this continues to be a serious problem.

Pre-2009 case law, as well as some post-2009 legal arguments based on obsolete pre-2009 case law, do NOT reflect the major statutory changes enacted in 2009.

For public trust to exist in the VAB process, VABs, VAB attorneys, and special magistrates must understand and act in accordance with this landmark legislation and must be diligent in avoiding the use of obsolete case law in the VAB process.

The last sentence in subsection 194.301(1), F.S., now states: "*The provisions of this subsection preempt any prior case law that is inconsistent with this subsection*."

Further, section 194.3015, F.S., now states in its entirety:

"*(1) It is the express intent of the Legislature that a taxpayer shall never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment. All cases establishing the every-reasonable-hypothesis standard were expressly rejected by the Legislature on the adoption of chapter 97-85, Laws of Florida. It is the further intent of the Legislature that any cases published since 1997 citing the every-reasonable-hypothesis standard are expressly rejected to the extent that they are interpretive of legislative intent*."

"*(2) This section is intended to clarify existing law and apply retroactively*."

In 1997, the Florida Legislature, in an attempt to implement fairness for property taxpayers, enacted the original version of section 194.301, F.S., stating in pertinent part:

"*In no case shall the taxpayer have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment*."

In the 1996 to 1998 period, multiple law articles addressed issues in the assessment appeal process and legislative efforts to address fairness for property taxpayers.

In 2001, despite the 1997 enactment of section 194.301, F.S., in Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the court issued a decision that actually applied the "*reasonable hypothesis"* standard, stating:

"*Because there are so many well-recognized approaches for arriving at an appraisal, the appraiser's decision may be overturned only if there is no reasonable hypothesis to support it.*"

In 2002, again despite the 1997 enactment of section 194.301, in Mazourek v. Wal-Mart, 831 So. 2d 85, 91 (Fla. 2002), the court extended the error by quoting the 2001 decision in Wal-Mart v. Todora, likewise stating:

"*Because there are so many well-recognized approaches for arriving at an appraisal, the appraiser's decision may be overturned only if there is no reasonable hypothesis to support it.*"

In 2006, the decision from In re Litestream Technologies, LLC, 337 B.R. 705, 710 (Bkrtcy. M.D. Fla. 2006) further extended the same error by quoting from Mazourek, instead of following the Legislature's 1997 directive in section 194.301, F.S.

Then, in 2009, the Florida Legislature completely amended section 194.301 and created section 194.3015, addressing in both the problem of superseded case law.

In 2013 in CVS EGL Fruitville Sarasota FL, LLC and Holiday CVS, LLC. v. Todora, 124 So. 3d 289 (Fla. 2d DCA 2013), the Second District Court of Appeal admitted the error it made in the aforementioned 2001 case of Wal-Mart v. Todora, and explained how this error was extended when the Florida Supreme Court quoted the error in its aforementioned 2002 decision in Mazourek v. Wal-Mart.

Also, in CVS EGL, the Second District Court explained an example of the legislative intent behind the 2009 enactments in sections194.301 and 194.3015, stating:

"*Because the legislature rejected the application of "any cases published since 1997 citing the every-reasonable-hypothesis standard," it follows that the legislature intended to supersede Todora and* Mazourek*. We must therefore give deference to the legislature and conclude that Todora and Mazourek are not controlling*."

In July 2016, the difficulty with applying sections 194.301 and 194.3015 appeared in a final judgment (Singh v. Darden Restaurants, Inc.) where the trial court erred because it failed to apply standards in sections 194.301 and 194.3015, and instead applied obsolete case law standards based on assessment "*discretion*."

Then, in Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019), the Fifth District Court overturned the July 2016 trial judgment and explained how the trial judgment erroneously applied pre-2009 case law, stating in pertinent part:

"…*in its final judgment, the trial court cited to language from Mazourek v. Wal-Mart Stores, Inc., 831 So. 2d 85, 89 (Fla. 2002), that "[t]he property appraiser's determination of assessment value is an exercise of administrative discretion within the officer's field of expertise." The Mazourek decision preceded the 2009 amendment to section*

194.301, Florida Statutes, where the Legislature articulated that the value of property must be determined by an appraisal methodology that met the criteria of section 193.011 and professionally accepted appraisal practices."

Other Examples of Superseded Case Law

The holdings in some court decisions based on the legislatively rejected "*reasonable hypothesis*" standard show an interconnection between such standard and the obsolete concomitant (attendant) standards that also appeared in such holdings.

For example, in CVS EGL (2013), the court rejected the concomitant standard of "*within the range of reasonable appraisals*" because of its interconnection with the legislatively rejected "*reasonable hypothesis*" standard.

Eight examples of superseded case law are listed and described below.

None of these superseded standards is harmless because they unequivocally reflect a lower standard of care (expertise and diligence) for developing, reporting, and reviewing just values than the standards required by current law in sections 194.301 and 194.3015.

VABs, VAB attorneys, and special magistrates must be diligent to avoid using any of these types of superseded standards and to reject any arguments espousing them.

Superseded Concomitant Standard No. 1:

"*the core issue in any action challenging a tax assessment is the amount of the assessment, not the methodology utilized in arriving at the valuation*"

In Bystrom v. Whitman, 488 So. 2d 520, 521 (Fla. 1986), the court applied this obsolete standard together with the rejected "*reasonable hypothesis*" standard.

In 2007 in CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007), the U.S. Supreme Court emphasized the necessity of reviewing appraisal methodology in valuations disputes, stating: "*We do not see how a court can go about determining true market value if it may not look behind the State's choice of valuation methods*."

In 2009, the Legislature enacted four new determinative just valuation standards, each providing methodological requirements for developing and reviewing just valuations.

Superseded Concomitant Standard No. 2:

"*within the range of reasonable appraisals*"

In Blake v. Xerox, 447 So. 2d 1348 (Fla. 1984), the court equated this obsolete concomitant standard with the "*reasonable hypothesis*" standard, stating:

"*Regardless of which method was theoretically superior, the trial court was bound to uphold the appraiser's determination if it was lawfully arrived at and within the range of*

reasonable appraisals, that is, if it was supported by any reasonable hypothesis of legality."

In CVS EGL (2013), the court applied section 194.3015 in overturning a trial judgment that had used the legislatively rejected "*reasonable hypothesis*" standard and its concomitant standard of "*within the range of reasonable appraisals,*" stating:

"*At no point during the trial court's application of these standards should it consider whether the assessment is within the range of reasonable appraisals or whether it is supported by any reasonable hypothesis of legality."*

Superseded Concomitant Standard No. 3:

"[t]*he property appraiser's determination of assessment value was an exercise of administrative discretion within the officer's field of expertise*"

In Blake v. Xerox, 447 So. 2d 1348, 1350 (Fla. 1984), the decision linked this old standard with the legislatively rejected "*reasonable hypothesis*" standard.

This obsolete statement runs afoul of diligence requirements in the current standards of professionally accepted appraisal practices and appropriate appraisal methodologies.

In Darden Restaurants, Inc. v. Singh, 266 So. 3d 228, 229 (Fla. 5th DCA 2019), the court recognized this concomitant standard as being obsolete since 2009.

Superseded Concomitant Standard No. 4:

"*the method of valuation and the weight to be given each factor is left to the appraiser's discretion*"

In Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the holding linked this obsolete standard with the legislatively rejected "*reasonable hypothesis*" standard and with the superseded "*within the range of reasonable appraisals*" standard.

In its 2007 decision in CSX, the U.S. Supreme Court emphasized the necessity of reviewing appraisal methodology in ad valorem tax valuation disputes, stating: "*We do not see how a court can go about determining true market value if it may not look behind the State's choice of valuation methods*."

In 2009, the Legislature enacted four new determinative just valuation standards, each providing methodological requirements for developing and reviewing just valuations.

The valuation method and the weight actually given to each section 193.011 factor can be proven only by the actual application and reporting of an appropriate appraisal process that complies with all applicable law and results in a valid just valuation.

Thus, under current law, the valuation method and the weight given to each section 193.011 factor are governed solely by the legal, physical, and economic characteristics

of the subject property and by the appropriate application of all just valuation standards in sections 194.301 and 194.3015 and all other applicable law.

Superseded Concomitant Standard No. 5:

"*The determination of just value inherently and necessarily requires the exercise of appraisal judgment and broad discretion by Florida property appraisers*."

In Fla. Department of Revenue v. Howard, 916 So. 2d 640 (Fla. 2005), the decision references the two preceding obsolete statements based on "*discretion*," along with this third variant of the obsolete "discretion" standard.

This "*discretion*" variant was based on decades-old legal concepts from a time when the now legislatively rejected *"reasonable hypotheses*" standard held sway.

Notably, the term "*discretion*" does not appear in the 2024 ~~2020-2021~~ edition of the Uniform Standards of Professional Appraisal Practice and, likewise, does not appear in the widely cited appraisal text, *The Appraisal of Real Estate, 15th Edition*, published in 2020 by the Appraisal Institute.

Regarding "*appraisal judgment*," key excerpts from the *Uniform Appraisal Standards for Federal Land Acquisition 2016*, published by the Appraisal Foundation, pages 203-204, describe the diligent application of sound appraisal judgment in the appraisal process:

"*Serving this important function requires expertise, diligence, sound judgment, and objectivity*..."

"*The appraiser must be diligent in data collection and competently apply the accepted methods and techniques of the appraisal profession*…"

"*Appraisers must exercise sound judgment based on known pertinent facts and circumstances, and it is their responsibility to obtain knowledge of all pertinent facts and circumstances that can be acquired with diligent inquiry and search. They must then weigh and consider the relevant facts, exercise sound judgment, and develop an opinion that is completely unbiased by any consideration favoring either the landowner or the government*."

Thus, appraisal judgment is NOT a substitute for appraisal expertise, diligence, or objectivity. For valid just valuations, appraisal judgment must be sound and must be applied in compliance with the seven overarching standards for valid just valuations.

Superseded Concomitant Standard No. 6:

"*Appraisal is an art, not a science*"

In 1969 in Powell v. Kelly 223 So. 2d 305 (Fla. 1969), court applied this obsolete standard along with the legislatively rejected "*reasonable hypothesis*" standard.

In its 2007 decision on ad valorem appraisal methodology, the U.S. Supreme Court held that appraisal is an "*applied science*." See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007), 552 U.S. 9 (2007).

On appraisal being a science, Appendix A of the widely cited textbook*, The Appraisal of Real Estate, 15th Edition*, published in 2020 by the Appraisal Institute, states:

"*Professional appraisal practice applies the scientific processes of economic analyses (i.e., the valuation process) to develop conclusions in an impartial, objective manner, without bias or any desire on the part of appraisers to accommodate their own interests or the interests of their clients. To form sound conclusions, appraisers avoid personal beliefs or biases and search for market evidence to support their appraisal opinions. It is this level of independence and freedom from either personal views or personal financial gain, and strict adherence to the scientific principles contained in the valuation process, that separate the profession of appraisal from other fields that also deal with real estate values.*"

Superseded Concomitant Standard No. 7:

"*Because there are so many well-recognized approaches for arriving at an appraisal*…"

In Wal-Mart v. Todora, 791 So. 2d 29, 30 (Fla. 2d DCA 2001), the Second District Court ignored section 194.301 and applied this obsolete concomitant standard together with the now legislatively rejected "*reasonable hypothesis*" standard, stating:

"*Because there are so many well-recognized approaches for arriving at an appraisal, the appraiser's decision may be overturned only if there is no reasonable hypothesis to support it*."

Then, in CVS EGL (2013), the Second District Court admitted its 2001 error in Wal-Mart v. Todora and applied section 194.3015 in overturning a May 2012 trial judgment that had erroneously applied these superseded standards.

Superseded Concomitant Standard No. 8:

"*an appraiser may reach a correct result for the wrong reason*"

In City National Bank v. Blake, 257 So. 2d 264 (Fla. 3d DCA 1972), the court equated this concomitant standard with the now legislatively rejected "*reasonable hypothesis*" standard, stating:

"*A tax assessment is presumed correct, and in order to successfully challenge it, the taxpayer must present proof which excludes every reasonable hypothesis of a legal assessment. That is, an assessor may reach a correct result for the wrong reason*."

This old standard was rendered obsolete by the U.S. Supreme Court's 2007 decision in CSX and by Florida's enactments in sections 194.301 and 194.3015, F.S.

Superseded Concomitant Standard No. 9:

A value assessment challenge on equitable grounds must allege and prove discrimination relative to "*all"* or *"substantially all"* other property in the county.

The 1976 decision in Deltona Corp. v. Bailey, 336 So.2d 1163, 1167 (Fla. 1976) rejected an equal protection challenge, stating in pertinent part:

"… *a reading of Count II in its entirety indicates that an essential element is missing. Deltona fails to allege that all (or even substantially all) other property in the county is systematically assessed at a value less than the assessment of Deltona's property. When speaking of the general level of assessments in the county the amended complaint avers that Deltona's property is assessed at a level higher than the general level of assessment for similar properties in Volusia County, Florida. Since Deltona failed to plead that it is being "singled out" and specifically discriminated against vis-a-vis the other taxpayers generally in Volusia County, it has no standing to challenge its assessment on equal protection grounds*…"

Thus, Deltona rejected an equal protection claim that was based on the comparative standard of "*similar properties*" within the county and, instead, applied a much more stringent comparative standard of "*all*" or "*substantially all*" other property in the county.

The use of the Deltona decision in post-2009 VAB proceedings is erroneous and must be avoided because Deltona has been superseded by both the U.S. Supreme Court and by the Florida Legislature on the core issue of delineating the comparative property group for comparison to subject assessments.

In 1980, the Florida Legislature enacted the following provision, which is now placed in Section 194.034(5), F.S.:

"*For the purposes of review of a petition, the board may consider assessments among comparable properties within homogeneous areas or neighborhoods*."

This statute delineates the comparable property group much more narrowly ("*within homogeneous areas or neighborhoods*") than the obsolete Deltona standard of "*all"* or *"substantially all*" other property in the county. Clearly, section 194.034(5), F.S., superseded Deltona's obsolete comparative standard.

Further, in 1989 in Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster Cty., 488 U. S. 336 (1989), the U.S Supreme Court found in favor of a taxpayer's claims of disparate treatment and used the following phrases to delineate the comparative property group for application in an equal protection review: "*similarly situated property*," "*generally comparable property*" "*comparable neighboring property*," and "*comparable property in the county*."

Then, in 1991 in Ozier v. Seminole County Property Appraiser 585 So.2d 357, 359 (Fla. 5th DCA 1991), the Fifth District Court rejected argument from a county property appraiser who urged the Court to apply Deltona and deny standing for a taxpayer to challenge the assessment on constitutional grounds.

- Notably, the Ozie*r* court held that Deltona "*must give way to*" Allegheny.

And, finally, in 2009 the Florida Legislature enacted a new determinative, comparative standard in section 194.301(2)(a)3., F.S., which provides for a just value assessment to be deemed invalid upon a finding by a VAB or court that the assessment 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*."

Thus, Florida's current statutory comparative standard of "*comparable property within the same county*" aligns perfectly with the U.S. Supreme Court's comparative property standard in Allegheny.

Without any doubt, the holding in Deltona has been superseded by subsequent law, and VABs, VAB attorneys, and VAB special magistrates must avoid any use of the obsolete Deltona case and must apply the current law as described above.

Superseded Concomitant Standard No. 10:
"Where an appraisal is based on sales of comparable properties, the appraiser necessarily considers all, and uses some, of the factors set forth in section 193.011."

This superseded conclusory standard appears in a pre-2009 decision in Bystrom v. Bal Harbour 101 Condominium Association, Inc., 502 So.2d 1312 (Fla. 3d DCA 1987), in which the decision also states:

> "*The taxpayers had the burden of presenting proof which excluded every reasonable hypothesis of a legal assessment.*"

Thus, this obsolete concomitant standard operated inextricably with the superseded "every reasonable hypothesis" standard rejected by the Florida Legislature in 1997 and again in 2009 in Section 194.3015 and in the last sentence in Section 194.301(1), F.S.

- The Florida Supreme Court has recognized that Florida's constitution delegates to the Legislature the responsibility of determining the specifics of how just valuation must be determined, stating "…*the framers of the constitution delegated to the Legislature the responsibility for deciding the specifics of how that 'just valuation' would be secured*." Sunset Harbour Condominium Association v. Robbins, 914 So.2d 925, 931 (Fla. 2005), citing Collier County v. State, 733 So.2d 1012, 1019 (Fla. 1999).

- Current Florida statutes make absolutely clear that Boards and special magistrates must avoid superseded case law that is inconsistent with current statutory law.

The current statutory standards of professionally accepted appraisal practices and appropriate appraisal methodologies encompass a rich and readily available body of knowledge on the appropriate application of each of the three just valuation methods including the sales comparison method.

- Accordingly, there is absolutely no need for a special magistrate or Board attorney to consider superseded pre-2009 case law.

This obsolete concomitant standard also lacks any mention of the current standard of care for developing and reporting just valuations under the current statutory standard of "professionally accepted appraisal practices."

- The core elements of the current standard of care are discussed in the following excerpt from a recent article titled *Standards for Standards of Care*, published by the Appraisal Institute in the Fall 2023 edition of its quarterly magazine titled *Valuation*.

    - "*So, what is the standard of care for an appraiser? At a general level, it means the level of expertise, skill and diligence that is expected from a competent and qualified appraiser when performing a similar assignment*."

    - However, none of these core elements of the appraiser's current standard of care are addressed in the obsolete pre-2009 case law from which Superseded Concomitant Standard 10 and its variants originate.

Professionally accepted appraisal practices requires the appraiser to exercise due diligence and due care in identifying the legal, physical, and economic characteristics of the subject property and market, and in researching, confirming, and analyzing comparable sales. See Competency Rule and Standard 5, Mass Appraisal Development, *Uniform Standards of Professional Appraisal Practice*, *2024 Edition*, pages 13, 36, 37, and 39.

- However, these current requirements are not reflected in Superseded Concomitant Standard 10 and its variants.

After the landmark 2009 legislation that enacted Section 194.3015, F.S., and completely amended section 194.301 F.S., the eight just valuation factors in section 193.011 are now incorporated into section 194.301 in three places.

- These eight just valuation factors must now be applied together with the other just valuation standards in sections 194.301 and 194.3015, F.S., and in other applicable law, so that each standard is given professionally accepted and lawful meaning.

- The method of just valuation and the weight to be given to each of the section 193.011 factors is now governed solely by: 1) the legal, physical, and economic characteristics of the subject property; 2) the four additional determinative standards in sections 194.301 and 194.3015, F.S.; and 3) all other applicable law.

- In just valuations under current law, it is necessary to actually apply the section 193.011 factors that are appropriate for compliance with the four new

determinative standards in sections 194.301 and 194.3015 and all other applicable law.

- Under the dictates of section 194.301 and 194.3015, F.S., for any section 193.011 factor not applied in a particular just valuation, the appraiser must report a clear, logical, fact-based, and professionally accepted reason for excluding the factor.

Boards and their special magistrates must avoid Superseded Concomitant Standard 10 and its variants and, instead, must apply the seven overarching standards for valid just valuations provided in current Florida law, which standards include professionally accepted appraisal practices and appropriate appraisal methodologies.

5. Compliance with All Other Applicable Law.

Other applicable law includes just valuation standards for particular situations. These standards may exist in Florida Statutes or in currently applicable case law.

Examples of other just valuation standards from statutes include the following:

- Section 192.042(2), F.S., provides the January 1 date of assessment and provides that construction work in progress shall have no value placed thereon until substantially completed as defined in section 192.001(11)(d), F.S.

- Section 193.016, F.S., provides as follows regarding valuations of tangible personal property:

  "*If the property appraiser's assessment of the same items of tangible personal property in the previous year was adjusted by the value adjustment board and the decision of the board to reduce the assessment was not successfully appealed by the property appraiser, the property appraiser shall consider the reduced values determined by the value adjustment board in assessing those items of tangible personal property."*

  "If the property appraiser adjusts upward the reduced values previously determined by the value adjustment board, the property appraiser shall assert additional basic and underlying facts not properly considered by the value adjustment board as the basis for the increased valuation notwithstanding the prior adjustment by the board."

Other applicable law may also include current case law standards such as:

- Case law specifies fee simple estate as the interest to be appraised in just valuations. See Schultz v. TM Fla.-Ohio Realty, Ltd., 577 So.2d 573 (Fla. 1991), and see Dept. of Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 (Fla. 1977).

- Case law precludes just valuation methods that include intangible value. See Scripps Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), and see Singh v. Walt Disney Parks, --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020).

6. Correct Application of an Appropriate Appraisal Methodology

After its 2009 amendment, section 194.301(1), F.S., provides in pertinent part:

"*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*."

An appropriate appraisal methodology is one that: 1) identifies and is appropriately based on the legal, physical, and economic characteristics of the subject property, 2) complies with overarching standards one through five, and 3) is correctly applied.

In Scripps Howard Cable Co. v. Havill, 665 So. 2d 1071 (Fla. 5th DCA 1995), *approved*, 742 So. 2d 210 (Fla. 1998), the court held that the appraisal method under review was not appropriate under the circumstances and certified the following question:

"Is the Income/Unit Rule Method of Appraisal an Appropriate Method of Assessing the Tangible Personal Property of Television Cable Companies?"

Then, in Scripps Howard Cable Co. v. Havill, 742 So. 2d 210 (Fla. 1998), the Florida Supreme Court answered the certified question in the negative and approved the decision of the Fifth District, holding that the method was not appropriate because it unlawfully included the value of intangible property.

In 2007, the U.S. Supreme Court held that disputes over ad valorem tax values require review of the appraisal methodology. See CSX Transp., Inc. v. Ga. Bd. of Equalization, 552 U.S. 9 (2007), 552 U.S. 9 (2007) ("We do not see how a court can go about determining true market value if it may not look behind the State's choice of valuation methods").

In August 2020, the court issued its final decision in Singh v. Walt Disney Parks, --- So.3d ---, 2020 WL 4574735 (Fla. 5th DCA Aug. 7, 2020), stating in pertinent part:

"*At trial, the parties agreed that the income approach to value was a professionally accepted appraisal practice and provided the most reliable indicator of value, but they disputed the proper methodology for performing such an assessment*."

"*Moreover, it ruled that even if the Rushmore method was a professionally accepted appraisal practice, it could not be used in a manner that violated Florida law. The trial*

court concluded that by including value attributable to Disney business activities on the Property, Appraiser applied the Rushmore method in a way that violated Florida law."

"*We agree with the trial court that Appraiser, in the manner in which he applied the Rushmore method, impermissibly included the value of Disney's intangible business assets in its assessment*."

The Disney decision shows even if an appraisal practice is professionally accepted in other contexts, it cannot be applied in a manner that violates another part of Florida law.

Later, in October 2020, a trial court issued a final judgment stating as follows regarding appropriate appraisal methodology.

"*The Property Appraiser failed to prove by a preponderance of the evidence that his assessment was arrived at by utilizing methodology complying with section 193.011 and professionally accepted appraisal practices. Additionally, the Court finds the Property Appraiser's sole reliance on a cost approach without considering and preparing at least one of an income and/or sales comparison approach for the Subject Property type was not an appropriate appraisal methodology used in making the assessment*."
See Dillards, Inc. v. Singh, No. 2016-CA-005094-O, (Fla. 9th Cir. Ct., October 1, 2020).

7. A Just Valuation Developed and Reported in Compliance with Overarching Standards One though Six and Supported by a Preponderance of the Relevant and Credible Evidence

For a just valuation to withstand the scrutiny of review, it must be developed and reported in compliance with overarching standards one through six and must be supported by a preponderance of the relevant and credible just valuation evidence.

Petitioner Not Required to Present Opinion or Estimate of Value

The petitioner is not required to provide an opinion or estimate of just value.

No provision of law requires the petitioner to present an opinion or estimate of value.

The Board or special magistrate is not authorized to require a petitioner to provide an opinion or estimate of just value.

The petitioner has the option of choosing whether to present an opinion or estimate of just value.

Presentation of Evidence by the Parties

In a Board or special magistrate hearing, the property appraiser is responsible for presenting relevant and credible evidence in support of his or her determination. See Rule 12D-9.025(3)(a), F.A.C.

An appraisal report shall not be submitted as evidence in a value adjustment board proceeding in any tax year in which the person who performed the appraisal serves as a special magistrate to that county value adjustment board for the same tax year. See Rule 12D-9.025(4)(g), F.A.C.

Under Subsection 194.301(1), F.S., in a hearing on just value, the first issue to be considered is whether the property appraiser establishes a presumption of correctness.

* The property appraiser shall present evidence on this issue first. See Rule 12D-9.024(7), F.A.C.

* While the property appraiser is required to present evidence on this issue first, the Board or special magistrate must allow the petitioner a chance to present evidence on this issue before deciding whether the presumption of correctness is established.

"In a Board or special magistrate hearing, the petitioner is responsible for presenting relevant and credible evidence in support of his or her belief that the property appraiser's determination is incorrect." See Rule 12D-9.025(3)(a), F.A.C.

If the property appraiser establishes a presumption of correctness by proving by a preponderance of the evidence that the just value assessment was arrived at by complying with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the petitioner must prove by a preponderance of the evidence that:

1. The property appraiser's just valuation does not represent just value; or

2. The property appraiser's just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

However, if the property appraiser does not establish a presumption of correctness because he or she did not prove by a preponderance of the evidence that the just valuation was arrived at by complying with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate, the Board or special magistrate must take one of the two following actions:

1. If the record contains competent substantial evidence of just value that cumulatively meets the requirements of Section 193.011, F.S., and professionally accepted appraisal practices, the Board or special magistrate must establish a revised just value; or

2. If the record lacks such competent substantial evidence, the Board or special magistrate must remand the assessment to the property appraiser with appropriate directions with which the property appraiser must comply.

Evaluation of Evidence by the Board or Special Magistrate

Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special magistrate must:

1. Review the evidence presented by the parties;

2. Determine whether the evidence presented is admissible;

3. Admit the evidence that is admissible;

4. Identify the evidence presented to indicate that it is admitted or not admitted; and

5. Consider the admitted evidence.

The term "admitted evidence" means evidence that has been admitted into the record for consideration by the Board or special magistrate. See Rule 12D-9.025(2)(a), F.A.C.

"No evidence shall be considered by the board or special magistrate except when presented and admitted during the time scheduled for the petitioner's hearing, or at a time when the petitioner has been given reasonable notice." See Rule 12D-9.025(4)(a), F.A.C.

"If a party submits evidence to the board clerk prior to the hearing, the board or special magistrate shall not review or consider such evidence prior to the hearing." See Rule 12D-9.025(4)(b), F.A.C.

Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:

1. "*As the trier of fact, the board or special magistrate may independently rule on the admissibility and use of evidence."*

2. *"If the board or special magistrate has any questions relating to the admissibility and use of evidence, the board or special magistrate should consult with the board legal counsel."*

3. *"The basis for any ruling on admissibility of evidence must be reflected in the record."*

4. *"The special magistrate may delay ruling on the question during the hearing and consult with board legal counsel after the hearing."*

The Board or special magistrate shall consider the admitted evidence. See Rule 12D-9.025(1)(d), F.A.C.

A property owner generally is qualified, on account of ownership, to testify regarding the just value of his or her property. See In re Steffen, 342 B.R. 861 (Bkrtcy. M.D. Fla. 2006).

NOTE: More information on the admissibility of evidence is presented in Module 4 of this training.

Sufficiency of Evidence

When applied to evidence, the term "sufficient" is a test of adequacy. See Rule 12D-9.027(6), F.A.C.

Sufficient evidence is admitted evidence that has enough overall weight, in terms of relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6), F.A.C.

The Florida Supreme Court stated the following regarding sufficient evidence: *"Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character, weight, or amount, as will legally justify the judicial or official action demanded."* See Tibbs v. State, 397 So.2d 1120 (Fla. 1981). Also, see Moore v. State, 800 So.2d 747 (Fla. 5th DCA 2001).

A particular conclusion is justified when the overall weight of the admitted evidence meets the standard of proof that applies to the issue under consideration. See Rule 12D-9.027(6), F.A.C.

The Board or special magistrate must consider the admitted evidence and determine whether it is sufficiently relevant and credible to reach the "preponderance of the evidence" standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-9.027(5), and 12D-9.027(6), F.A.C.

Rule 12D-9.027(6), F.A.C., states the following in pertinent part: *"In determining whether the admitted evidence is sufficient for a particular issue under consideration, the board or special magistrate shall:*

(a) Consider the relevance and credibility of the admitted evidence as a whole, regardless of which party presented the evidence;

(b) Determine the relevance and credibility, or overall weight, of the evidence;

(c) Compare the overall weight of the evidence to the standard of proof;

(d) Determine whether the overall weight of the evidence is sufficient to reach the standard of proof; and

(e) Produce a conclusion of law based on the determination of whether the overall weight of the evidence has reached the standard of proof."

For administrative reviews of just valuations, “relevant evidence” is evidence that is reasonably related, directly or indirectly, to the statutory criteria that apply to the just valuation of the petitioned property. See Rule 12D-9.025(2)(b), F.A.C.

* This description means the evidence meets or exceeds a minimum level of relevance necessary to be admitted for consideration, but does not necessarily mean that the evidence has sufficient relevance to legally justify a particular conclusion. See Rule 12D-9.025(2)(b), F.A.C.

In evaluating the relevance of evidence, the Board or special magistrate must consider, as of the January 1 assessment date, how well the evidence relates to the petitioned property and to the statutory criteria found in Section 193.011, F.S., and in Section 194.301, F.S.

For administrative reviews of just valuations, “credible evidence” means evidence that is worthy of belief (believable). See *Black’s Law Dictionary, Eighth Edition*, page 596.

NOTE: More information on evaluating the relevance and credibility of evidence is presented in Module 11 of this training.

By itself, the property record card is not sufficient evidence for establishing a presumption of correctness for the assessment under Subsection 194.301(1), F.S.

Materials describing the general appraisal practices of the property appraiser alone, without discussing how those practices were applied to the assessment at issue, are not sufficient to establish a presumption of correctness for the assessment. See Property Tax Informational Bulletin PTO 09-29.

The approval of an assessment roll by the Department of Revenue is not evidence that a particular assessment was made in compliance with statutory requirements and is not sufficient to establish a presumption of correctness for the assessment. See Property Tax Informational Bulletin PTO 09-29.

Requirements for Establishing a Presumption of Correctness

A presumption of correctness for the assessment is not established unless the property appraiser proves by a preponderance of the evidence that the property appraiser’s just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. See Rule 12D-9.027(2)(a), F.A.C.

A presumption of correctness for the assessment is established only when the property appraiser proves by a preponderance of the evidence that the property appraiser’s just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

Requirements for Overcoming a Presumption of Correctness

If the property appraiser establishes a presumption of correctness, the petitioner can overcome the presumption of correctness by proving by a preponderance of the evidence one of the following:

1. The property appraiser's just valuation does not represent just value; or

2. The property appraiser's just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county. See Subsection 194.301(2)(a), F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

If the property appraiser establishes a presumption of correctness and the petitioner does not overcome the presumption of correctness as described above, the assessment stands.

Establishing a Revised Just Value or Remanding the Assessment

If the property appraiser does not establish a presumption of correctness for the assessment, or if the petitioner overcomes the presumption of correctness, the Board or special magistrate must take one of the two following actions:

1. If the record contains competent substantial evidence of just value that cumulatively meets the requirements of Section 193.011, F.S., and professionally accepted appraisal practices, the Board or special magistrate must establish a revised just value; or

2. If the record lacks such competent substantial evidence, the Board or special magistrate must remand the assessment to the property appraiser with appropriate directions with which the property appraiser must comply.

NOTE: Information on the procedural requirements for remanded assessments is presented in Module 5 of this training.

Competent Substantial Evidence for Establishing a Revised Just Value

Competent substantial evidence for establishing a revised just value, as part of an administrative review under Chapter 194, Parts 1 and 3, F.S., means evidence that:

1. Cumulatively meets the criteria of Section 193.011, F.S., and professionally accepted appraisal practices;

2. Tends to prove (is probative of) just value as of January 1 of the assessment year under review;

3. Is sufficiently relevant and credible to be accepted as adequate to support (legally justify) the conclusion reached; and

4. Otherwise meets all requirements of law.

Establishment of Revised Just Values in Administrative Reviews

The Board or special magistrate is required to establish a revised just value under either of the two following conditions:

1. The property appraiser does not establish a presumption of correctness for the assessment and the hearing record contains competent substantial evidence for establishing a revised just value as described above; or

2. The petitioner overcomes a presumption of correctness established by the property appraiser and the hearing record contains competent substantial evidence for establishing a revised just value as described above.

Within their scope of authority, the Board or special magistrate shall establish a revised just value based upon the competent substantial evidence for establishing a revised just value. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

Prior to 2009 and the adoption of House Bill 521, Section 194.301, F.S., provided that the Board may establish the assessment when authorized.

However, the current statute, effective for administrative reviews in 2009, specifically requires that the Board shall establish the just value when authorized by law. See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521).

"In establishing a revised just value, the board or special magistrate is not restricted to any specific value offered by one of the parties." See Rule 12D-9.027(2)(b)3.a., F.A.C.

In establishing a revised just value when required by law, Boards and special magistrates are not required, and are not authorized, to complete an independent valuation approach.

The establishment of a revised just value does not require the evidence necessary to complete an independent valuation approach.

The establishment of a revised just value only requires enough evidence to legally justify making an adjustment to the property appraiser's original just valuation.

In establishing a revised just value when required by law, Boards and special magistrates are authorized to make the necessary calculations.

Sequence of General Procedural Steps

This section sets forth below a sequence of general procedural steps for Boards and special magistrates to follow in administrative reviews of just valuations in order to fulfill the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(2), F.A.C.

This sequence of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

"The board or special magistrate shall not be required to make, at any time during a hearing, any oral or written finding, conclusion, decision, or reason for decision." See Rule 12D-9.025(9), F.A.C.

"The board or special magistrate has the discretion to determine whether to make such determinations during a hearing or to consider the petition and evidence further after the hearing and then make such determinations." See Rule 12D-9.025(9), F.A.C.

In following this sequence of steps, Boards or special magistrates must also meet the requirements of Rule 12D-9.025(1), F.A.C., which are the following:

* Review the evidence presented by the parties;

* Determine whether the evidence presented is admissible;

* Admit the evidence that is admissible; and

* Identify the evidence presented to indicate that it is admitted or not admitted.

The sequence of general procedural steps presented below is based on Rule 12D-9.027(2), F.A.C. The sequence of general procedural steps is as follows.

1. Consider the admitted evidence presented by the parties.

2. Identify and consider the essential characteristics of the petitioned property based on the admitted evidence and the factors in Section 193.011, F.S.

3. Identify the appraisal methodology used by the property appraiser in developing his or her just valuation of the petitioned property, and consider this appraisal methodology in light of the essential characteristics of the petitioned property.

4. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

5. Determine whether the property appraiser's appraisal methodology is appropriate and whether the property appraiser established a presumption of correctness for the assessment.

a) The property appraiser's just valuation methodology is not appropriate and a presumption of correctness is not established unless the admitted evidence proves by a preponderance of the evidence that the property appraiser's just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

b) The property appraiser's just valuation methodology is appropriate and the presumption of correctness is established only when the admitted evidence proves by a preponderance of the evidence that the property appraiser's just valuation methodology complies with Section 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

6. If the Board or special magistrate determines that a presumption of correctness is established, the Board or special magistrate must then determine whether the admitted evidence proves by a preponderance of the evidence that:

   a) The property appraiser's just valuation does not represent just value; or

   b) The property appraiser's just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county.

7. If the Board or special magistrate determines that one or both of the conditions specified under Step 6 exist, the presumption of correctness is overcome.

8. If the property appraiser does not establish a presumption of correctness, or if the presumption of correctness is overcome, the Board or special magistrate must determine whether the hearing record contains competent, substantial evidence of just value which cumulatively meets the criteria of Section 193.011, F.S., and professionally accepted appraisal practices.

   a) If the hearing record contains competent, substantial evidence for establishing a revised just value, the Board or an appraiser special magistrate must establish a revised just value based only upon such evidence. In establishing a revised just value, the Board or special magistrate is not restricted to any specific value offered by one of the parties.

   b) If the hearing record lacks competent, substantial evidence for establishing a revised just value, the Board or special magistrate must remand the assessment to the property appraiser with appropriate directions for establishing just value. The property appraiser is required to follow these directions.

9. If the property appraiser establishes a presumption of correctness as described in Step 5 above and that presumption of correctness is not overcome as described in Step 6 above, the assessment stands.

Operation of the Eighth Criterion Under Florida Law

Subsection 193.011(8), F.S., known as the "eighth criterion," requires proper consideration of the "net proceeds of sale." The "eighth criterion" was last amended in 1979 and is presented below in its entirety.

"The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property."

Subsection 193.011(8), F.S., requires proper consideration of the "net proceeds of sale" of tangible personal property, regardless of whether an actual sale of the property has occurred. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

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), tellingly stated 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*." (underlined emphasis added)

- This holding is notable because it explains legislative intent for the costs of sale to be "*excluded from the ad valorem appraisal process*" without exception.

- This holding aligns with uniform application of the cost of sale factor, without regard to whether the property was sold, the property type involved, or the approach used to value the property.

Further, a failure to uniformly apply the "net proceeds of sale" factor would be selective reappraisal.

The text, *Mass Appraisal of Real Property*, published in 1999 by the International Association of Assessing Officers, page 315, describes the highly undesirable practice of selective reappraisal as follows:

"*The reliability of sales ratio statistics depends on unsold parcels being appraised in the same manner as sold parcels. Selective reappraisal of sold parcels distorts sales ratio results, possibly rendering them useless. Equally important, selective reappraisal of*

sold parcels ("sales chasing") is a serious violation of basic appraisal uniformity and is highly unprofessional." (underlined emphasis added)

Additionally, the U.S. Supreme Court has disapproved selective reappraisal. See Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989).

The eighth criterion must be properly considered in the just valuation of tangible personal property. See Turner v. Tokai Financial Services, Inc., 767 So.2d 494 (Fla. 2nd DCA 2000) review denied 780 So.2d 916 (Fla. 2001).

* In administrative reviews of tangible personal property just valuations, Boards and special magistrates must also properly consider the eighth criterion.

However, Florida law does not provide for the same information regarding the eighth criterion on tangible personal property assessment rolls as for real property rolls.

* There are no recorded selling prices for tangible personal property as there are for real property.

* Property appraisers are not required to report selling prices for tangible personal property to the Department as they are required to do for real property.

NOTE: More information on the eighth criterion and the just valuation of tangible personal property is presented earlier in this module in the section titled "Florida Information on Appraisal Development."

The Eighth Criterion in Reviews of Tangible Personal Property

In the development of tangible personal property assessment rolls, property appraisers are responsible for properly considering the eighth criterion in the just valuation of tangible personal property.

In administrative reviews of just valuations of tangible personal property, the parties are responsible for presenting relevant and credible evidence, in accordance with law, regarding how the eighth criterion applies to the just valuation of tangible personal property.

Boards and special magistrates are responsible for determining, based on admitted evidence and in accordance with law, how the eighth criterion applies in administrative reviews of just valuations of tangible personal property.

Module 9:
Administrative Reviews of Denials of Exemptions and Property Classifications

This training module addresses the following topics:

PART 1: Introduction

- Overview of Exemptions and Property Classifications
- Applications for Exemptions and Property Classifications
- Denials of Exemptions and Property Classifications
- Scope of Authority for Administrative Reviews
- Overview of Statutory Criteria
- Standard of Proof for Administrative Reviews
- Evaluation of Evidence by the Board or Special Magistrate
- Sufficiency of Evidence

PART 2: Administrative Reviews of Denials of Exemptions

- The Administrative Review Process for Denials of Exemptions
- Statutory Criteria for Exemptions

Statutory Criteria for Different Types of Personal Exemptions

- Homestead Exemption: Qualifications and Benefits
- Homestead Exemption: Permanent Residence
- Homestead Exemption: Rental
- Homestead Exemption: Additional Exemption for Low Income Seniors
- Homestead Exemption: Save Our Homes
- Homestead Exemption: Damaged or Destroyed Property
- Homestead Exemption: Living Quarters for Parents or Grandparents
- Homestead Exemption: Totally and Permanently Disabled Persons
- Exemptions for Veterans
- Exemption for Veterans: Discount for Disabled Veterans
- Exemption for Deployed Service Members Beginning in 2011
- Exemptions for First Responders Who Were Totally and Permanently Disabled in the Line of Duty, and For Surviving Spouses

Statutory Criteria for Different Types of Institutional Exemptions

- Government Property
- Exempt Entities
- Lands Used for Conservation Purposes
- Specific Educational Exemptions
- Exemptions for Tangible Personal Property
- Affordable Housing Exemptions ~~**(NEW)**~~
- Other Exemptions

PART 3: Administrative Reviews of Denials of Property Classifications

- The Administrative Review Process for Denials of Classifications
- Statutory Criteria for Property Classifications

Statutory Criteria for Different Types of Property Classifications

- Agricultural Property
  - Agricultural Property: Dispersed Water Storage Programs
  - Agricultural Property: Quarantine and Eradication Programs
  - Agricultural Property: Special Types
  - Agritourism
- Pollution Control Devices
- Noncommercial Recreation and Conservation Lands
- Historic Property
- Historic Property: Section 193.503, F.S.
- Historic Property: Section 193.505, F.S.
- High-water Recharge Property
- Working Waterfront Property
- Renewable Energy Source Device

PART 4: Administrative Reviews of Determinations of Changes of Ownership or Control or Qualifying Improvement

- Assessment Increase Limitation for Homestead Real Property
- Assessment Increase Limitation for Non-Homestead Real Property

Learning Objectives

After completing this training module, the learner should be able to:

- Identify what is subtracted from assessed value to arrive at taxable value.
- Recognize the statutory order in which exemptions must be deducted to arrive at taxable value (see Section 196.031, F.S.)
- Recognize that the disabled veterans discount is deducted after exemptions are deducted to arrive at taxable value
- Distinguish between a property classification and classified use value
- Identify the requirements for applications for exemptions and property classifications
- Recognize the requirements for denials of exemptions and property classifications
- Identify the statutory criteria for a valid denial of an exemption by the property appraiser
- Apply the correct procedures for determining whether a denial of an exemption by the property appraiser is valid
- Apply the correct procedures when a denial of an exemption by the property appraiser has been determined to be invalid
- Apply the correct procedures when a denial of an exemption by the property appraiser has been determined to be valid
- Recognize and apply the scope of authority for administrative reviews of denials of exemptions and property classifications

- Identify the items that a Board or special magistrate may consider in addition to admitted evidence
- Recognize that there is no presumption of correctness for a property appraiser's determination on an exemption or classification
- Identify the applicable standard of proof, its definition, and how it is applied
- Identify and apply the steps for evaluating evidence in administrative reviews
- Recognize and apply the provisions for ruling on the admissibility of evidence
- Identify and apply the definitions of relevant evidence and credible evidence
- Recognize and apply the standards for determining the sufficiency of evidence
- Identify when the Board or special magistrate is required or is NOT required to make determinations such as findings, conclusions, or decisions
- Apply the sequence of general procedural steps for administrative reviews of denials of exemptions
- Apply the sequence of general procedural steps for administrative reviews of denials of property classifications
- Distinguish between the sequence of general procedural steps for administrative reviews of denials of exemptions and the sequence of general procedural steps for administrative reviews of denials of property classifications
- Recognize the conditions under which a Board or special magistrate must grant an exemption or classification
- Recognize the conditions under which a Board or special magistrate must NOT grant an exemption or classification
- Identify and apply the statutory criteria for administrative reviews of denials of exemptions and property classifications

PART 1: Introduction

Overview of Exemptions and Property Classifications

Sections 3, 4, and 6, Article VII, of the Florida Constitution, provide for exemptions and property classifications.

Generally, after the property appraiser has considered the just value of a property and produced an assessed value, the assessed value is then reduced by any exemptions to produce the taxable value.

After the assessed value is correctly determined, the exempt amounts are deducted in the order provided by law (see Section 196.031, F.S.). After that, any discounts, such as the disabled veteran's discount, are applied.

"Exemption" means exemptions under Chapter 196, Florida Statutes, and other Florida Statutes.

* For purposes of this training, exemptions include the following: veteran's discount, immunity where a claim of tax immunity for government property is being made, and portability assessment differences.

"Property Classification" or "Classification" means a classification of property for assessment purposes according to applicable statutory criteria, including those in Chapter 193, Part II, F.S., and an assessment of the property at its classified use value.

"Classified use value" means the value of a property that is based solely on the property's character or use and based on the applicable statutory criteria, without regard to the property's highest and best use. See Subsection 192.001(2), F.S.

Applications for Exemptions and Property Classifications

A property owner must apply for an exemption by the applicable deadline in order to receive the exemption. See Subsection 196.011(1)(a), F.S.

If a property owner failed to timely file for an exemption, he or she must late file for the exemption with the property appraiser by the 25th day after the mailing of the notice of proposed property taxes (TRIM notice).

If the property appraiser determines, based on sufficient evidence, that the late filed exemption was late because the applicant was unable to file timely or there were other extenuating circumstances, the property appraiser may grant the exemption to an otherwise qualified applicant for the current year.

If the property appraiser does not grant the late filed exemption, the property owner may appeal to the Board, by the 25th day after the mailing of the notice of proposed property taxes (TRIM notice).

The Board may grant the exemption to an otherwise qualified applicant if it finds the failure to apply was due to extenuating circumstances. Subsection 196.011(8), F.S.

If a postal error resulted in an otherwise eligible applicant not filing on time his or her application for an exemption, the Board or special magistrate must grant the exemption. Subsection 196.011(7), F.S.

The county may waive the requirement that exemptions be applied for annually and provide for automatic renewal of some exemptions. Subsection 196.011(9), F.S.

* At the option of the property appraiser, initial or original applications for homestead exemption for the succeeding year may be accepted and granted after March 1.

Note: Legislation enacted in 2014 amended section 193.461, F.S., to provide that an applicant for the agricultural classification who does not file an application by the March 1 filing deadline, can file an application with the property appraiser on or before 25 days after the property appraiser mails the notice of proposed property taxes (TRIM notice).

* The application must include sufficient evidence that demonstrates the applicant was unable to apply in a timely manner or otherwise demonstrates extenuating circumstances warranting the classification.

* The property appraiser may grant the application if he or she determines the circumstances warrant.

* If the applicant files an application for the classification and fails to provide sufficient evidence to the property appraiser as required, the applicant may file a petition with the value adjustment board on or before 25 days after the property appraiser mails the notice of proposed property taxes (TRIM notice).

* This legislation was effective July 1, 2014 and applies to administrative reviews beginning in 2014. See Chapter 2014-150, Section 2, Laws of Florida (HB 7091).

Denials of Exemptions and Property Classifications

Florida Statutes require that the property appraiser issue in writing a denial of an exemption or classification.

The denial will typically reference missing documentation that, if supplied, could qualify the taxpayer for the exemption or classification.

The petitioner must show that the statutory criteria are satisfied to qualify for an exemption or classification.

If an exemption or classification is denied by the property appraiser, the petitioner must file his or her petition to the Board within 30 days of that notice of denial.

Subsection 196.193(5)(a), F.S., states the following regarding the denial of an exemption:

"If the property appraiser determines that any property claimed as wholly or partially exempt under this section is not entitled to any exemption or is entitled to an exemption to an extent other than that requested in the application, he or she shall notify the person or organization filing the application on such property of that determination in writing on or before July 1 of the year for which the application was filed."

Subsection 196.193(5)(b), F.S., provides the following criteria for a valid denial of an exemption by the property appraiser:

1. *"The notification must state in clear and unambiguous language the specific requirements of the state statutes which the property appraiser relied upon to deny the applicant the exemption with respect to the subject property."*

2. *"The notification must be drafted in such a way that a reasonable person can understand specific attributes of the applicant or the applicant's use of the subject property which formed the basis for the denial."*

3. *"The notice must also include the specific facts the property appraiser used to determine that the applicant failed to meet the statutory requirements."*

Under Subsection 196.193(5)(b), F.S., if a property appraiser fails to provide a notice of denial of an exemption that complies with the criteria stated above, the denial or the attempted denial of the exemption is invalid.

* Rule 12D-9.027(4)(a), F.A.C., provides the following regarding the administrative review of a denial of an exemption:

  "(a) In the case of an exemption, the board or special magistrate shall consider whether the denial was valid or invalid and shall:

  1. Review the exemption denial, and compare it to the applicable statutory criteria in Section 196.193(5), F.S.;

  2. Determine whether the denial was valid under Section 196.193, F.S.; and

  3. If the denial is found to be invalid, not give weight to the exemption denial or to any evidence supporting the basis for such denial, but shall instead proceed to dispose of the matter without further consideration in compliance with Section 194.301, F.S."

Scope of Authority for Administrative Reviews

The administrative review process (done by Boards) is separate and different from the assessment roll production process (done by property appraisers).

The Board's authority is limited to the review of individual petitions filed. See Spooner v. Askew, 345 So.2d 1055 (Fla. 1976).

The Board has the limited function of reviewing and correcting individual determinations of the property appraiser. See Bath Club, Inc. v. Dade County, 394 So.2d 110 (Fla. 1981).

Upon proper filing of a petition, a Board is authorized to conduct an administrative review of a decision by the property appraiser to deny a tax exemption or a property classification.

* The Board has no authority to review, on its own volition, a decision of the property appraiser to deny an exemption. See Redford v. Department of Revenue, 478 So.2d 808 (Fla. 1985).

The Board or special magistrate has no power to grant an exemption or property classification not authorized by law. See Rule 12D-10.003(1), F.A.C.

The Board or special magistrate has no power to grant an exemption or property classification on the basis of hardship of a particular taxpayer. See Rule 12D-10.003(1), F.A.C.

In considering a petition for exemption or property classification, the Board or special magistrate must not consider the ultimate amount of tax required. See Rule 12D-10.003(1), F.A.C.

In administrative reviews regarding exemptions or classifications, Boards and special magistrates are not authorized to perform any independent factual research into attributes of the subject property or attributes of the property owner.

Boards and special magistrates must follow the provisions of law on the administrative review of assessments. See Chapter 194, Parts 1 and 3, F.S., and Rule Chapters 12D-9, 12D-10, and 12D-16, F.A.C.

In administrative reviews of denials of exemptions and classifications, Boards and special magistrates are bound by the same standards as property appraisers. See Rule 12D-10.003(1), Florida Administrative Code. However, when observing this requirement, Boards and special magistrates must act within their scope of authority.

In administrative reviews, Boards and special magistrates are not authorized to consider any evidence except evidence properly presented by the parties and properly admitted into the record for consideration. See Rule 12D-9.025(4)(a), F.A.C.

In addition to admitted evidence, Boards and special magistrates are authorized to consider only the following items in administrative reviews.

1. Legal advice from the Board legal counsel;

2. Information contained or referenced in the Department's Uniform Policies and Procedures Manual and Accompanying Documents; and

3. Information contained or referenced in the Department's training for value adjustment boards and special magistrates.

Overview of Statutory Criteria

Boards and special magistrates, with the assistance of the Board attorney, must identify and follow the provisions of law that pertain to the administrative review of exemptions and property classifications.

These provisions of law include statutory criteria that apply to the particular exemption or classification under administrative review. Statutory criteria do not include any factor that is not a conclusive statutory criterion.

For purposes of this training module, "statutory criteria" means a set of statutory requirements that must be satisfied individually, by sufficient admitted evidence, to legally justify the granting of the exemption or classification by a Board or special magistrate.

Where necessary and where the context will permit, the term "statutory criteria" includes any constitutional criteria that do not require implementation by legislation. See Rule 12D-9.027(4)(g), F.A.C.

* Additional information on the statutory criteria for exemptions is contained in Rule Chapter 12D-7, F.A.C.

The effective date of administrative review is January 1 of the assessment year under review. This is an essential statutory criterion. See Section 192.042, F.S.

Standard of Proof for Administrative Reviews

In administrative reviews, Boards or special magistrates must consider admitted evidence and then compare the weight of the evidence to a "standard of proof" to make a determination on an issue under review.

Generally, the term "evidence" means something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of a disputed fact. See *Black's Law Dictionary, Eighth Edition*, page 595.

"Standard of proof" means the level of proof needed for the Board or special magistrate to conclude that the classification or exemption status assigned to the property is incorrect. See Rule 12D-9.027(5), F.A.C.

The standard of proof that applies in administrative reviews of the classification or exemption status is called "preponderance of the evidence," which means "greater weight of the evidence." See Subsection 194.301(2)(d), F.S., and Rule 12D-9.027(5), F.A.C.

For administrative reviews, preponderance of the evidence means greater weight of the evidence or evidence that more likely than not proves the property appraiser's determination should be overturned and the petition granted. See Gross v. Lyons, 763 So.2d 276 (Fla. 2000).

This standard of proof is the scale by which the Board or special magistrate measures the weight (relevance and credibility) of the admitted evidence.

The taxpayer shall never be required to prove that the property appraiser's determination is not supported by any reasonable hypothesis of a legal assessment.

There is no presumption of correctness in administrative reviews of the exemption or property classification status of the property. See Subsection 194.301(2)(d), F.S.

The party initiating the challenge has the burden of proving by a preponderance of the evidence that the classification or exemption status assigned to the property is incorrect. See Subsection 194.301(2)(d), F.S.

Evaluation of Evidence by the Board or Special Magistrate

Under Rule 12D-9.025(1), F.A.C., as part of administrative reviews, the Board or special magistrate must:

1. Review the evidence presented by the parties;

2. Determine whether the evidence presented is admissible;

3. Admit the evidence that is admissible;

4. Identify the evidence presented to indicate that it is admitted or not admitted; and

5. Consider the admitted evidence.

The term "admitted evidence" means evidence that has been admitted into the record for consideration by the Board or special magistrate. See Rule 12D-9.025(2)(a), F.A.C.

"No evidence shall be considered by the board or special magistrate except when presented and admitted during the time scheduled for the petitioner's hearing, or at a time when the petitioner has been given reasonable notice." See Rule 12D-9.025(4)(a), F.A.C.

"If a party submits evidence to the board clerk prior to the hearing, the board or special magistrate shall not review or consider such evidence prior to the hearing." See Rule 12D-9.025(4)(b), F.A.C.

Rule 12D-9.025(2)(d), F.A.C., contains the following four provisions:

1. "*As the trier of fact, the board or special magistrate may independently rule on the admissibility and use of evidence."*

2. *"If the board or special magistrate has any questions relating to the admissibility and use of evidence, the board or special magistrate should consult with the board legal counsel."*

3. *"The basis for any ruling on admissibility of evidence must be reflected in the record."*

4. *"The special magistrate may delay ruling on the question during the hearing and consult with board legal counsel after the hearing."*

NOTE: More information on the admissibility of evidence is presented in Module 4.

Sufficiency of Evidence

When applied to evidence, the term "sufficient" is a test of adequacy. See Rule 12D-9.027(6), F.A.C.

Sufficient evidence is admitted evidence that has enough overall weight, in terms of relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6), F.A.C.

The Florida Supreme Court stated the following regarding sufficient evidence: *"Sufficiency is a test of adequacy. Sufficient evidence is such evidence, in character, weight, or amount, as will legally justify the judicial or official action demanded."* See Tibbs v. State, 397 So.2d 1120 (Fla. 1981). Also, see Moore v. State, 800 So.2d 747 (Fla. 5th DCA 2001).

A particular conclusion is justified when the overall weight of the admitted evidence meets the standard of proof that applies to the issue under consideration. See Rule 12D-9.027(6), F.A.C.

The Board or special magistrate must consider the admitted evidence and determine whether it is sufficiently relevant and credible to reach the "preponderance of the evidence" standard of proof explained previously. See Rules 12D-9.025(1)(d), 12D-9.027(5), and 12D-9.027(6), F.A.C.

Rule 12D-9.027(6), F.A.C., states the following in pertinent part: *"In determining whether the admitted evidence is sufficient for a particular issue under consideration, the board or special magistrate shall:*

(a) Consider the relevance and credibility of the admitted evidence as a whole, regardless of which party presented the evidence;

(b) Determine the relevance and credibility, or overall weight, of the evidence;

(c) Compare the overall weight of the evidence to the standard of proof;

(d) Determine whether the overall weight of the evidence is sufficient to reach the standard of proof; and

(e) Produce a conclusion of law based on the determination of whether the overall weight of the evidence has reached the standard of proof."

For administrative reviews of denials of exemptions and classifications, "relevant evidence" is evidence that is reasonably related, directly or indirectly, to the statutory criteria that apply to the petitioned property or the property owner, as applicable. See Rule 12D-9.025(2)(b), F.A.C.

* This description means the evidence meets or exceeds a minimum level of relevance necessary to be admitted for consideration, but does not necessarily mean that the evidence has sufficient relevance to legally justify a particular conclusion. See Rule 12D-9.025(2)(b), F.A.C.

In evaluating the relevance of evidence, the Board or special magistrate must consider, as of the January 1 assessment date, how well the evidence relates to the petitioned property or the property owner, as applicable, and to the statutory criteria that apply.

For administrative reviews, "credible evidence" means evidence that is worthy of belief (believable). See *Black's Law Dictionary, Eighth Edition*, page 596.

NOTE: More information on evaluating the relevance and credibility of evidence is presented in Module 11 of this training.

PART 2: Administrative Reviews of Denials of Exemptions

The sections below contain information on the administrative review of denials of exemptions, including information on the statutory criteria for exemptions.

The Administrative Review Process for Denials of Exemptions

Set forth below is a sequence of general procedural steps for Boards and special magistrates to follow in administrative reviews of denials of exemptions in order to fulfill the procedural requirements of Section 194.301, F.S., and Rule 12D-9.027(4), F.A.C.

This sequence of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

"The board or special magistrate shall not be required to make, at any time during a hearing, any oral or written finding, conclusion, decision, or reason for decision." See Rule 12D-9.025(9), F.A.C.

"The board or special magistrate has the discretion to determine whether to make such determinations during a hearing or to consider the petition and evidence further after the hearing and then make such determinations." See Rule 12D-9.025(9), F.A.C.

Under Rule 12D-9.027(4), F.A.C., in administrative reviews of denials of exemptions, the Board or special magistrate shall follow this sequence of general procedural steps:

1. In the case of an exemption, the Board or special magistrate shall consider whether the denial was valid or invalid and shall:

    * Review the exemption denial, and compare it to the applicable statutory criteria in Section 196.193(5), F.S.;

    * Determine whether the denial was valid under Section 196.193, F.S.; and

    * If the exemption denial is found to be invalid, not give weight to the exemption denial or to any evidence supporting the basis for such denial, but shall instead proceed to dispose of the matter without further consideration in compliance with Section 194.301, F.S.

2. If the exemption denial is found to be valid, the Board or special magistrate shall proceed with the following steps:

    * Consider the admitted evidence presented by the parties;

    * Identify the particular exemption issue that is the subject of the petition;

    * Identify the statutory criteria that apply to the particular exemption that was identified as the issue under administrative review;

    * Identify and consider the essential characteristics of the petitioned property or the property owner, as applicable, based on the statutory criteria that apply to the issue under administrative review;

    * Identify and consider the basis used by the property appraiser in issuing the exemption denial for the petitioned property; and

    * Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's denial is incorrect and the exemption should be granted because all of the applicable statutory criteria are satisfied.

The Board or special magistrate must decide whether the admitted evidence, regardless of which party presented the evidence, has sufficient weight (in relevance and credibility) to legally justify overturning the property appraiser's original determination and granting the exemption.

If the admitted evidence proves the petitioner's case by the greater weight of the evidence, the original determination must be overturned and the petition granted.

If the admitted evidence does not legally justify overturning the property appraiser's original determination, the determination must be upheld.

Statutory Criteria for Exemptions

This section contains information regarding the statutory criteria that must be met to qualify for the various exemptions available in Florida.

* In the case of the more common exemptions, this training presents more detail on the applicable statutory criteria.

* Less common exemptions will simply be mentioned so that users of this training are aware of their existence, and a citation will be provided so users can read the statutory criteria when one of the less common exemptions arises.

Statutory Criteria for Different Types of Personal Exemptions

The statutory criteria that apply to several types of personal exemptions are presented below under their respective headings.

Homestead Exemption: Qualifications and Benefits

Homestead is established on January 1 of each tax year. In order to qualify for the homestead exemption an individual must:

* Have legal or beneficial title to the property which is demonstrated by a deed or instrument on file in the public records; and

* Make the property their permanent residence, or the permanent residence of a person legally or naturally dependent upon the individual.

Homestead property receives:

* An exemption of $25,000 from all levies.

* An additional exemption of up to $25,000 on the assessed valuation greater than $50,000 for all levies other than school district levies.

* A limitation on assessments under the Save Our Homes provisions.

* Eligibility for additional exemptions that are available only on homestead properties. See section 196.031, F.S.

  See also Rule 12D-7.0142, F.A.C.

Note: Legislation enacted in 2024 adopted a proposed amendment to the State Constitution Article VII, Section 6 requiring an annual adjustment for inflation of the second $25,000 homestead exemption to take effect January 1, 2025. The first adjustment would be January 1, 2025. It is only "the additional exemption of up to $25,000 on the assessed valuation greater than $50,000 for all levies other than school district levies" that would be adjusted so the homestead exemption holders that would benefit are the ones that have received some or all of the additional $25,000 above $50,000 starting January 1, 2025. The first $25,000 exemption remains the same with no adjustment. See Chapter 2024-261, Laws of Florida, (HB 7019) and HJR 7017.

Note: Legislation enacted in 2022 amended section 196.031, F.S., to create a new subsection (5) which provides for purposes of applying exemptions listed in that section, exempt real property includes portions of the real property and contiguous real property assessed solely on the basis of character or use pursuant to sections 193.461 or 193.501, F.S., or assessed pursuant to section 193.505, F.S. The amendments do not affect the provisions in section 193.155, F. S., limiting the application of that section to the residence and curtilage. The amendments to section 196.031, F.S. are intended to be remedial and clarifying in nature and apply retroactively, but do not create a right to a refund of any tax paid before the effective date of July 1, 2022. See Chapter 2022-97, Sections 5 and 6, Laws of Florida, (CS/HB 7071), effective July 1, 2022.

Homestead Exemption: Permanent Residence

Permanent residence means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning.

A person may have only one permanent residence at a time, and once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred. See section 196.012(17), F.S.

Intention to establish a permanent residence in Florida is a factual determination to be made, in the first instance, by the property appraiser.

Section 196.015, F.S., provides factors the property appraisers may consider in making this determination.

Although any one factor is not conclusive of the establishment or non-establishment of permanent residence, the following are relevant factors that may be considered by the property appraiser in making his or her determination about the intent of a person claiming a homestead exemption to establish a permanent residence in Florida:

* Formal declaration of domicile by the applicant recorded in the public records of the county where the exemption is sought;

* Where the applicant’s dependent children are registered for school;

* The place of employment of the applicant;

* The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated;

* Proof of voter registration at the place for which the exemption is being sought;

* A valid Florida driver's license or identification card and evidence of relinquishment of driver's license from another state;

* The issuance of a license tag on any motor vehicle owned by the applicant;

* The address as listed on federal income tax returns filed by the applicant;

* The location where the applicant's bank statements and checking accounts are registered; and

* Proof of payment of utilities at the location where residence is being claimed.

See section 196.015, F.S.

Homestead Exemption: Rental

See section 196.061, F.S.

Rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes constitutes abandonment of the dwelling as a homestead, when the property is rented for more than 30 days per calendar year for two consecutive years.

Abandonment continues until the dwelling is physically occupied by the owner.

Note: Legislation enacted in 2013 provides that rental of the homestead after January 1 of any year does not affect the homestead exemption for tax purposes for that particular year unless the property is rented for more than 30 days per calendar year for two consecutive years. These changes were effective July 1, 2013, and apply to assessments and administrative reviews beginning in 2014. See Chapter 2013-64, Laws of Florida (SB 342).

This provision does not apply to a member of the Armed Forces of the United States whose service in such forces is the result of a mandatory obligation imposed by the federal Selective Service Act or who volunteers for service as a member of the Armed Forces of the United States.

Homestead Exemption: Additional Exemption for Low Income Seniors

The Board of County Commissioners of a county or the governing authority of a municipality may adopt an ordinance to allow an additional homestead exemption of up

to $50,000 for any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, and who:

* Has the legal or equitable title to real estate;
* Uses that real estate as their permanent residence;
* Is age 65, or older; and
* Whose household income does not exceed $20,000, adjusted annually, beginning January 1, 2001, by the percentage change in the average cost-of-living index.

~~For the 2020 assessment year, the 2019 adjusted gross household income to qualify for this exemption is $30,721 or less.~~

For the 2021 assessment year, the 2020 adjusted gross household income to qualify for this exemption is $31,100 or less.

For the 2022 assessment year, the 2021 adjusted gross household income to qualify for this exemption is $32,561 or less.

For the 2023 assessment year, the 2022 adjusted gross household income to qualify for this exemption is $35,167 or less.

For the 2024 assessment year, the 2023 adjusted gross household income to qualify for this exemption is $36,614 or less.

See section 196.075, F.S., and Rule 12D-7.0143, F.A.C.

Note: An amendment approved by the voters in the November 2012 general election added a local option of up to an additional $50,000 exemption for low income seniors that have maintained a permanent residence on the property for at least 25 years. See section 196.075, F.S.

Note: Legislation enacted in 2021 amended section 196.075(4)(d), and (5), Florida Statutes, which provides an additional homestead exemption for persons 65 and older. The amendment to section 196.075(4)(d), F.S., requires an ordinance enacted by a local government authorizing an additional homestead exemption for low-income seniors must require the taxpayer to submit a sworn statement of household income when claiming the exemption for the first time. The amendment to section 196.075(5), F.S., provides that the property appraiser notifies each taxpayer of the adjusted income limitation each year. The taxpayer must respond by May 1 if their income exceeds the limitation. The property appraiser may conduct random audits of the taxpayers' sworn statements. See Chapter 2021-208, Section 1, Laws of Florida, (HB 597), effective July 1, 2021.

Homestead Exemption: Save Our Homes

Relating to exemptions, the primary limitation on assessment increases is the Save Our Homes Amendment limitation which caps assessment increases on homestead property at the lesser of 3 percent or the percentage change in the consumer price index.

When applied to the just value assessment in the initial year when homestead is established, any subsequent increases in that assessment are capped.

Property is reassessed on the transfer of the homestead property.

Homestead Exemption: Damaged or Destroyed Property

See section 196.031(6), F.S.

A homestead exemption may be granted to damaged or destroyed property that is otherwise qualified if the property owner notifies the property appraiser that he or she intends to repair or rebuild the property and live in the property as his or her primary residence after the property is repaired or rebuilt and does not claim a homestead exemption on any other property.

Note: Legislation enacted in 2024 amended section 196.031(7), F.S. to provide if the property owner fails to begin the repair or rebuilding of the homestead property within five years after January 1 following the property's damage or destruction, it constitutes abandonment of the property as a homestead. After the five-year period, the expiration, lapse, nonrenewal, or revocation of a building permit issued to the property owner for the repairs or rebuilding also constitutes abandonment of the property as homestead. See Chapter 2024-158, Section 10, Laws of Florida, (HB 7073), effective July 1, 2024. The amendments to section 196.031, F.S. first apply to the 2025 property tax roll. See Chapter 2024-158, Section 17, Laws of Florida, (HB 7073), effective July 1, 2024. Under prior law failure by the property owner to begin the repair or rebuilding of the homestead property within three years after January 1 following the year the property was damaged or destroyed constitutes abandonment of the property as a homestead.

Note: Legislation enacted in 2022 created provisions for refund of taxes 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. Also enacted was 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. Legislation enacted in 2022 also provided a prorated refund of property taxes for residential improvements rendered uninhabitable for at least 30 days by Hurricane Ian or Hurricane Nicole during the 2022 calendar year. See Module 6 of this training for more information regarding catastrophic events and sudden and unforeseen collapses.

Homestead Exemption: Living Quarters for Parents or Grandparents

This exemption is found in Section 193.703, F.S. It applies to construction or reconstruction of a homestead intended to provide living quarters for the owner's parent or grandparent.

The qualifications for this exemption are:

* The parent or grandparent must be 62 or older;
* The parent or grandparent must be the natural or adoptive parent or grandparent of an owner of the homestead or of an owner's spouse;
* Application must be made by March 1;
* Reconstruction or construction must have been made to an existing homestead property; and
* The parent or grandparent must make their primary place of residence on the property and cannot qualify for a separate homestead exemption.

If a taxpayer qualifies under the statute, the exemption from taxation is limited to an amount not to exceed:

* Twenty percent of the total assessed value of the property as improved; or
* The increase in value resulting from the construction or reconstruction.

Homestead Exemption: Totally and Permanently Disabled Persons

See section 196.101, F.S.

In order to qualify for a total exemption on their homestead a person must have a qualifying household income (~~the 2019 household income cannot exceed $29,948 for the 2020 assessment year,~~ the 2020 household income cannot exceed $30,317 for the 2021 assessment year, the 2021 household income cannot exceed $31,741 for the 2022 assessment year, and the 2022 household income cannot exceed $34,282 for the 2023 assessment year, and the 2023 household income cannot exceed $35,693 for the 2024 assessment year) and the applicant must be:

* Paraplegic;
* Hemiplegic;
* Legally blind; or
* Totally and permanently disabled and dependent on a wheelchair for mobility.

Persons who are quadriplegic qualify for a total exemption on their homestead without meeting the income limitation.

Totally and permanently disabled persons who do not qualify for a total exemption can receive a $500 exemption under Section 196.202, F.S. This $500 exemption is also granted to widows, widowers, and blind persons.

Note: Legislation enacted in 2022 amended section 196.202(1), F.S., to increase the exemptions for bona fide Florida residents who are widows, widowers, blind, or totally

and permanently disabled from $500 to $5,000, for each exemption. The increase first applies to the 2023 tax roll. See Chapter 2022-97, Sections 12 and 13, Laws of Florida, (CS/HB 7071), effective January 1, 2023.

Exemptions for Veterans

See sections 196.081, 196.082, 196.091, and 196.24, F.S.
Any ex-service member (or qualified surviving spouse) who meets the three criteria below shall receive a $5,000 exemption on their property:

* Is a bona fide resident of the state;
* Was discharged under honorable conditions; and
* Has been disabled to a degree of 10 percent or higher.

Any ex-service member (or qualified surviving spouse) requiring specially adapted housing and required to use a wheelchair for his or her transportation shall be exempt from taxation on his or her homestead when he or she meets the following criteria:

* Was honorably discharged with a service-connected total disability certificate; and
* Is receiving or has received “special pecuniary assistance”.

Any totally and permanently disabled veteran or qualified surviving spouse shall be exempt from taxation on his or her homestead when he or she meets the following criteria:

* Was honorably discharged with a service-connected total and permanent disability;

* Was issued a letter from the United States Government or United States Department of Veterans Affairs or its predecessor certifying that the veteran is totally and permanently disabled; and

* Was a permanent resident of the State of Florida on January 1 of the year in which the exemption is being claimed (or was a permanent resident on January 1 of the year of their death).

This exemption is also granted to the qualified surviving spouse of a veteran who dies during active duty from service-connected causes provided that the veteran was a permanent resident of the State of Florida on January 1 of the year he or she died.

Note: Legislation enacted in 2018 amended section 196.24, F.S., relating to qualification for an exemption, to remove the statutory requirement for an unremarried surviving spouse to have been married to a disabled veteran for at least five years on the date of the veteran's death. See Chapter 2018-118, Section 16, Laws of Florida (CS/HB 7087).

Note: Legislation enacted in 2023 created section 196.081(1)(b)2., F.S., to provide that a veteran or veteran's surviving spouse may receive a prorated refund of property taxes paid on property on which legal or beneficial title is acquired between January 1 and November 1, if the veteran or veteran's surviving spouse applies for and receives an exemption under section 196.081, F.S. on the acquired property in the next tax year. Under this amendment the veteran or veteran's surviving spouse need not have received the exemption on previously owned parcel in the previous year. The refund is prorated as of the date of transfer. If the property appraiser determines the veteran or spouse is entitled to an exemption under section 196.081, F.S., on the newly acquired property, the law provides for the property appraiser to make entries on the tax roll necessary to allow the prorated refund of taxes for the previous tax year. Amended section 196.081(4), F.S., to state that a deceased veteran who died from service-connected causes while on active duty need not have been a permanent resident of Florida on January 1 of the year the veteran died in order for the veteran's surviving spouse to qualify for an exemption. This amendment applies to assessments beginning with the 2024 tax roll. See Chapter 2023-157, Sections 8 and 9, Laws of Florida (HB 7063), effective July 1, 2023.

Note: Legislation enacted in 2023 amended section 196.081, F.S., making several clarifying revisions to the section. Revised section 196.081(1)(b), F.S., changing "may" receive a refund to "is entitled to" a refund. Revised sections 196.081(3), 196.081(4)(b), and 196.081(6)(b). F.S., to indicate surviving spouses of totally and permanently disabled veterans, service persons killed in action and first responders may transfer the exemption rather than that the exemption "may be transferred." These provisions are remedial and clarifying and provide no refund of taxes paid before the act becomes a law. See Chapter 2023-157, Sections 6 and 7, Laws of Florida (HB 7063), effective May 25, 2023 upon becoming a law.

Note: Legislation enacted in 2020 created section 196.081(1)(b), F.S. to provide that a veteran or veteran's surviving spouse may receive a prorated refund of property taxes paid on property on which legal or beneficial title is acquired between January 1 and November 1. The additional requirements for the refund are that the veteran or veteran's surviving spouse:

- receives an exemption under section 196.081, F.S., on a property for the tax year, and
- applies for and receives an exemption on the acquired property in the next tax year under section 196.081, F.S.

The refund is prorated as of the date of transfer. If the property appraiser determines the veteran or spouse is entitled to an exemption under section 196.081, F.S., on the newly acquired property, the law provides for the property appraiser to make entries on the tax roll necessary to allow the prorated refund of taxes for the previous tax year. See Chapter 2020-140, Laws of Florida (CS/CS/HB 1249), effective July 1, 2020.

Exemption for Veterans: Discount for Disabled Veterans

See section 196.082, F.S.

In addition to the exemptions listed previously, there is a discount on taxes due on homestead property available to disabled veterans. In order to qualify, the veteran must meet the following criteria:

* Be 65 or older;
* Have a combat-related disability; and
* Have been honorably discharged.

When a veteran is qualified, the property appraiser shall apply all exemptions to which the veteran is entitled to the property value, calculate the taxes due on the property, and then reduce the taxes due by the veteran's percentage of disability.

Exemption for Deployed Servicemembers Beginning in 2011

The 2011 Legislature enacted an exemption for certain servicemembers who receive a homestead exemption and who are deployed in certain military operations to receive an additional ad valorem tax exemption.

* The percentage exempt under the exemption is calculated as the number of days the servicemember was deployed during the previous calendar year, divided by the number of days in that year, multiplied by 100.

* It applies to both the school and county taxable values, and applies beginning in the 2011 tax year.

* See Chapter 2011-93, Laws of Florida (effective May 31, 2011), creating Section 196.173, F.S.

* See also Rule 12D-7.0055, F.A.C.

Note: The 2022 Legislature amended section 196.173, F.S., relating to the exemption for deployed servicemembers, to remove Operation Observant Compass, which began in October 2011. The amendment added Operation Enduring Freedom - Horn of Africa, which began in January 2015, and added European Reassurance Initiative/ European Deterrence Initiative, which began in 2014. These amendments apply to the 2022 ad valorem tax roll. See Chapter 2022-97, Sections 7, 8, and 9, Laws of Florida, (CS/HB 7071), effective May 6, 2022.

After these amendments, this legislation retained the following military operations on the list:

- Operation Joint Task Force Bravo, which began in 1995.
- Operation Joint Guardian, which began on June 12, 1999.
- Operation Noble Eagle, which began on September 15, 2001.

- Operations in the Balkans, which began in 2004.
- Operation Nomad Shadow, which began in 2007.
- Operation U.S. Airstrikes Al Qaeda in Somalia, which began in January 2007.
- Operation Juniper Shield, which began in February 2007.
- Operation Copper Dune, which began in 2009.
- Operation Georgia Deployment Program, which began in August 2009.
- Operation Spartan Shield, which began in June 2011.
- Operation Martillo, which began in January 2012.
- Operation Inherent Resolve, which began on August 8, 2014.
- Operation Atlantic Resolve, which began in April 2014.
- Operation Freedom's Sentinel, which began on January 1, 2015.
- Operation Resolute Support, which began in January 2015.
- Operation Pacific Eagle, which began in September 2017.
- Operation Enduring Freedom - Horn of Africa, which began in January 2015
- European Reassurance Initiative/ European Deterrence Initiative, which began in 2014.

- This exemption is also available to servicemembers who were deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of a subordinate operation to a main operation designated in section 196.173(2), F.S.

Exemptions for First Responders Who Were Totally and Permanently Disabled in the Line of Duty, and For Surviving Spouses

Section 196.081, F.S., provides an exemption for surviving spouses of first responders who die in the line of duty. See Chapter 2012-54, Laws of Florida (CS/HB 95).

Note: Legislation enacted in 2023 amended section 196.081(6) and (6)(c), F.S. to include the surviving spouse of a first responder employed by the United States Government eligible to qualify for the exemption. Amended the same section to provide a first responder need not have been a permanent resident of Florida on January 1 of the year the first responder died in order for the first responder's surviving spouse to qualify for an exemption. This amendment applies to assessments beginning with the 2024 tax roll. See Chapter 2023-157, Sections 8 and 9, Laws of Florida (HB 7063), effective July 1, 2023.

Note: Legislation enacted in 2017 created section 196.102, F.S., to: provide an exemption for certain first responders whose total and permanent disability occurred in the line of duty, and for surviving spouses; extend the exemption application deadline for 2017 to August 1, 2017, or later if extenuating circumstances are shown; and provide for petitions to the value adjustment board for denials of such exemptions. This change was effective June 14, 2017, and applies to assessments and administrative reviews beginning in 2017. See Chapter 2017-105, Sections 2 and 3, Laws of Florida (CS/HB 455).

Statutory Criteria for Different Types of Institutional Exemptions

These exemptions apply to property other than homestead property. The exemption can be based either on the ownership of the property, such as governmental property, or the use of the property, such as educational exemptions.

Because of the number of these exemptions, most of the exemptions will not be discussed in detail. Instead a statutory reference will be provided so the requirements of that exemption can be found easily.

The statutory criteria that apply to several types of personal exemptions are presented below under their respective headings.

Government Property

See section 196.199, F.S.
Governmental property can be immune to taxation, exempt from taxation, or taxable.

Property that is immune from taxation is property that the taxing authority has no ability to tax.

Property that is exempt is property that the state, through its constitution, statutes, and local ordinances, has chosen not to tax.

Property belonging to the federal government is immune from taxation.

State and county property is also immune from taxation and cannot be taxed unless immunity has been waived.

Municipal property and property belonging to most special districts is exempt from taxation as long as it is being used for municipal or other exempt purposes.

Note: Legislation enacted in 2014 moved the exemption for special districts to newly created section 189.055, F.S., from section 189.403, F.S. See Chapter 2014-22, Section 53, Laws of Florida (SB 1632).

Governmental property leased to non-governmental entities may become taxable under section 196.199, F.S.

Note: Legislation enacted in 2018 amended section 163.01, F.S. to clarify that the property tax exemption in this statute applies whether the property is within or outside the jurisdiction of the legal entity that owns it. The amendment also clarifies that the exemption applies regardless of whether the legal entity enters into agreements with private entities to manage, operate or improve the utilities the separate entity owns. See Chapter 2018-118, Section 7, Laws of Florida (CS/HB 7087).

Note: Legislation enacted in 2015 added section 196.199(1)(a)2., F.S., to provide an ad valorem tax exemption for a leasehold interest in and improvements affixed to land owned by the United States, any branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States if the leasehold and improvements are acquired or constructed and used pursuant to the federal Military Housing Privatization Initiative of 1996. Any such leasehold interest and improvements are exempt from ad valorem taxation regardless of whether title is held by the United States and without necessity of filing an application for the exemption or receiving approval from the property appraiser. This act defines "improvements" to include actual housing units and any facilities that are directly related to such housing units, including any housing maintenance facilities, housing rental and management offices, parks and community centers, and recreational facilities. This law applies retroactively to January 1, 2007. See Chapter 2015-80, Section 1, Laws of Florida (CS for CS for HB 361).

Exempt Entities

See Sections 196.192, 196.193, 196,194, 196.195, and 196.196, F.S.
Exempt entities are nonprofit ventures which serve a charitable, religious, scientific, or literary purpose.

All property owned by an exempt entity and used exclusively for an exempt purpose is totally exempt.

Property owned by an exempt entity and used primarily for an exempt purpose is exempt to the extent that the ratio of such predominate use bears to the non-exempt use.

Tangible personal property loaned to an exempt entity for public display or exhibition on a recurring schedule for no, or nominal, consideration, is exempt.

Note: Legislation enacted in 2021 amended section 196.196(2), Florida Statutes, to provide that portions of a property that are not predominantly used for charitable, religious, scientific, or literary purposes are not exempt from taxation, and that an exemption for the portions of property used for charitable, religious, scientific, or literary purposes is not affected so long as the predominant use of such property is for charitable, religious, scientific, or literary purposes. The amendment applies to taxable years beginning on or after January 1, 2022, and does not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before July 1, 2021. See Chapter 2021-31, Sections 8 and 9, Laws of Florida, (HB 7061), effective July 1, 2021 and applicable beginning January 1, 2022.

Lands Used for Conservation Purposes

Section 196.26, F.S., provides a new exemption for the 2010 tax year for "real property dedicated in perpetuity for conservation purposes".

In order to qualify for this exemption, the parcel of land must:

* Be subject to an easement which dedicates the land in perpetuity for conservation purposes; and

* Be at least 40 acres in size or "fulfill a clearly delineated state conservation policy and yield a significant public benefit".

If the land is used exclusively for conservation purposes it is exempt from ad valorem taxation.

If the land is used for allowed commercial purposes, the land receives an exemption equal to 50 percent of the land's assessed value.

Note: Legislation was enacted in 2016 to amend section 196.011(6)(b), F.S., to provide that once the property appraiser has granted an original application for this exemption, the property owner is not required to file a renewal application until the property's use no longer complies with the restrictions and requirements of the conservation easement. See Chapter 2016-110, Laws of Florida (CS/SB 190).

Specific Educational Exemptions

Charter school property receives an exemption in Section 196.1983, F.S.

Note: Legislation enacted in 2017 amended section 196.1983, F.S., to clarify provisions requiring landlords to reduce lease payments made by charter schools so that the schools receive the full benefit derived by the landlord from the exemption, effective retroactively to January 1, 2017. See Chapter 2017-36, section 7, Laws of Florida (HB 7109).

Note: Legislation enacted in 2024 created subsection 196.011(5), F.S. providing that an annual application for exemption on property used to house a charter school is not necessary; requiring the owner or lessee of such property to notify the property appraiser in specified circumstances; providing penalties. See Chapter 2024-101, Section 4, Laws of Florida, (HB 1285), effective July 1, 2024.

Gold Seal Quality Child Care Centers are exempt as educational institutions. Section 402.26, F.S.

College sororities and fraternities can be exempt under section 196.198, F.S.

Section 196.198, F.S., also specifically exempts sheltered workshops providing rehabilitation and retraining to disabled individuals.

Note: Legislation enacted in 2023 amended section 196.198, F.S., to provide property is deemed owned by an educational institution if the educational institution is a lessee that owns the leasehold interest in a bona fide lease for a nominal amount per year having an original term of 98 years or more. Land, buildings, and other improvements to real property used exclusively for educational purposes are deemed owned by an educational institution if the institution currently using the land, buildings, and other improvements for educational purposes received the exemption under section 196.198, F.S., on the same property in any 10 consecutive prior years. See Chapter 2023-157, Section 12, Laws of Florida (HB 7063), effective July 1, 2023.

Note: Legislation enacted in 2013 amended Section 196.198, F.S, to include an additional form of ownership that qualifies for the educational property exemption.

* Property used exclusively for educational purposes is deemed owned by an educational institution and qualifies for the educational property exemption if the entity that owns 100 percent of the educational institution and the entity that owns the property are owned by the identical natural persons.

Note: Legislation enacted in 2021 amended section 196.198, Florida Statutes, educational property exemption, to provide that land, buildings, and other improvements used exclusively for educational purposes shall be deemed owned by an educational institution if the educational institution that currently uses the land, buildings, and other improvements for educational purposes is an educational institution described under s. 212.0602, F.S, and, under a lease, the educational institution is responsible for any taxes owed and for ongoing maintenance and operational expenses for the land, buildings, and other improvements. The owner of the property must disclose to the educational institution the full amount of the benefit derived from the exemption and the method for ensuring the educational institution receives the benefit so that the educational institution receives the full benefit of the exemption. Also, property owned by a house of public worship and used by an educational institution for educational purposes limited to students in preschool through grade 8 is exempt. The amendment relating to property owned by a house of public worship is remedial and clarifying in nature and applies to actions pending as of July 1, 2021. See Chapter 2021-31, Sections 11 and 12, Laws of Florida, (HB 7061), effective July 1, 2021.

Exemptions for Tangible Personal Property

Beginning in 2008, the first $25,000 of tangible personal property listed on each return is exempt. See section 196.183, F.S.

* See also Rule 12D-7.019, F.A.C.

Household goods and personal effects are exempt. See section 196.181, F.S.

Inventory is exempt. See section 196.185, F.S.

Note: Legislation enacted in 2017 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 was 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).

Affordable Housing Exemptions. ~~(NEW)~~ See sections 196.1978 and 196.1979, F.S.

As a result of recent legislation there are now seven ~~six~~ separate exemptions for low income housing. The affordable housing exemptions are

1. exemption for non-profit section 501(c)(3) qualified owners; see section 196.1978(1)(a), F.S.
2. exemption for land owned and leased for at least 99 years; see section 196.1978(1)(b), F.S.
3. exemption for owners with recorded agreement with Florida Housing Finance Corporation; see section 196.1978(2)(a), F.S.
4. exemption for newly constructed multifamily project; see section 196.1978(3), F.S.
5. a new exemption in section 196.1978(4) expands the section 196.1978(2) criteria to become effective prior to the 15 year limit, but requires the 99 year agreement; see section 196.1978(4), F.S.

6~~5~~. exemption from county millage under county local option for multifamily projects, in an amount set forth in county ordinance; see section 196.1979, F.S.

7~~6~~. exemption from municipal millage under municipal local option for multifamily projects, in an amount set forth in municipal ordinance; see section 196.1979, F.S.

The legislation is described below.

Note: Legislation enacted in 2024 created subsection 196.1978(4), F.S. to provide an exemption to portions of property in a newly constructed multifamily project beginning with the January 1 assessment immediately succeeding the date the property was placed in service allowing the property to be used as an affordable housing property that provides housing to natural persons or families meeting the extremely-low-income, very-low income, or low-income limits specified in section 420.0004. The multifamily project must be subject to a land use restriction agreement with the Florida Housing Finance Corporation recorded in the official records that requires that the property be so used for 99 years, must contain more than 70 units that are so used, and must be an improvement to land where an improvement did not previously exist or be a new improvement where an old improvement was removed, which was substantially completed within 2 years before the first submission of an application for exemption. When determining the value of the portion of property used to provide affordable housing for purposes of applying the exemption, the property appraiser must include in such valuation the proportionate share of the residential common areas, including the

land, fairly attributable to such portion of property. Property receiving an exemption pursuant to subsection 196.1978(3) or section 196.1979, F.S. is not eligible for this exemption. This subsection first applies to the 2026 tax roll. See Chapter 2024-158, Section 16, Laws of Florida, (HB 7073), effective July 1, 2024.

Note: Legislation enacted in 2024 amended section 196.1978(3), F.S., to clarify or update the exemption. Amended subparagraph (3)(a)2. to narrow the definition of "newly constructed" to mean an improvement to real property which was substantially completed within 5 years before the date of an applicant's first submission of a request for a certification notice. Amended sub-subparagraph (3)(b)2.b. to include portions of property that are within a newly constructed multifamily project in an area of critical state concern designated by section 380.0552, F.S. or chapter 28-36, Florida Administrative Code, which contain more than 10 units dedicated to housing natural persons or families meeting the income limitations provided in paragraph (3)(d). Created subparagraph (3)(d)2. providing that when determining the value of a unit for purposes of applying exemption, the property appraiser must include in such valuation the proportionate share of the residential common areas, including the land, fairly attributable to such unit. Amended paragraph (3)(k) to provide that units used as a transient public lodging establishment as defined in section 509.013, F.S. are not eligible for this exemption. See Chapter 2024-158, Section 13, Laws of Florida (HB 7073), effective upon becoming a law May 7, 2024 and Chapter 2024-188, Section 4, Laws of Florida (SB 328), effective upon becoming a law May 16, 2024. These amendments to section 196.1978, F.S. apply retroactively to January 1, 2024. See Chapter 2024-158, Section 15, Laws of Florida, (HB 7073), effective upon becoming a law May 7, 2024, and Chapter 2024-188, Section 6, Laws of Florida (SB 328), effective upon becoming a law May 16, 2024.

Note: Legislation enacted in 2024 amended section 196.1978(3), F.S. adding paragraph (3)(o) to provide that, beginning with the 2025 tax roll, a taxing authority may elect, by a two-thirds vote of the governing body, not to exempt property from its millage under sub-subparagraph (3)(d)1.a. which exempts 75 percent of the assessed value for units used to house natural persons or families whose annual household income is greater than 80 percent but not more than 120 percent of the median annual adjusted gross income. Under new subparagraph (3)(o)2. the units must also lie within a metropolitan statistical area or region where the number of affordable and available units is greater than the number of renter households in the area or region for the category entitled "0-120 percent AMI." The election to opt out must be by ordinance or resolution that takes effect on the next January 1 after its adoption. The taxing authority must provide the adopted ordinance or resolution to the property appraiser by its effective date. Under new subparagraph (3)(o)7., a property owner who was granted an exemption pursuant to sub-subparagraph (3)(d)1.a. before the taxing authority's decision to opt out, may continue to receive such exemption each subsequent consecutive year that the property owner applies for and is granted the exemption. This paragraph first applies to the 2025 tax roll. See Chapter 2024-158, Section 16, Laws of Florida, (HB 7073), effective July 1, 2024.

Note: Legislation enacted in 2024 amended section 196.1979, F.S. to add new subsections (6) and (7), renumbering existing subsections as (8) and (9). New subsection (6) provides the property appraiser shall review each application for exemption and determine whether the applicant meets all of the requirements of this section and is entitled to an exemption. A property appraiser may request and review additional information necessary to make such determination. A property appraiser may grant an exemption only for a property for which the local entity has certified as qualified property and which the property appraiser determines is entitled to an exemption. New subsection (7) provides when determining the value of a unit for purposes of applying the exemption, the property appraiser must include in such valuation the proportionate share of the residential common areas, including the land, fairly attributable to such unit. See Chapter 2024-158, Section 14, Laws of Florida, (HB 7073), effective upon becoming a law May 7, 2024 and Chapter 2024-188, Section 6, Laws of Florida (SB 328), effective upon becoming a law May 16, 2024. The amendments to section 196.1979, F.S. apply retroactively to January 1, 2024. See Chapter 2024-158, Section 15, Laws of Florida, (HB 7073), effective upon becoming a law May 7, 2024, and Chapter 2024-188, Section 6, Laws of Florida (SB 328), effective upon becoming a law May 16, 2024.

Note: Legislation enacted in 2023 created section 196.1978(1)(b), F.S., to provide land owned entirely by a qualified Section 501(c)(3) organization is eligible for an exemption if such land is leased for a minimum of 99 years for the purpose of and is predominantly used for affordable housing that serves extremely low income, very low income, low income and/or moderate income as described in section 420.0004, F.S. Predominant use for affordable housing means the square footage of the improvements on the property used for affordable housing is greater than 50% of the square footage of all improvements on the property. This amendment first applies to the 2024 tax roll. See Chapter 2023-17, Section 8, Laws of Florida (SB 102), effective July 1, 2023, titled the "Live Local Act."

An existing provision in section 196.196(5)(a), F.S. provides property owned by an exempt organization qualified as charitable under s. 501(c)(3) of the Internal Revenue Code is used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing to persons or families that meet the extremely-low-income, very-low-income, low-income, or moderate-income limits, as specified in s. 420.0004. The term “affirmative steps” means environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment of the property to providing affordable housing.

Note: Legislation enacted in 2023 created section 196.1978(3), F.S., to provide exemption to portions of property in a newly constructed multifamily project of more than 70 units. The exemption is 75% of the assessed value if the qualified property is used to provide housing to natural persons or families whose annual household income is greater than 80% and no more than 120% of median annual adjusted gross income. The exemption is 100% of the assessed value if the qualified property is used to provide housing to natural persons or families whose annual household income does not exceed 80% of median annual adjusted gross income. The multifamily units must be

rented for an amount that does not exceed the amount specified by the most recent multifamily rental programs income and rent limit chart posted by the Florida Housing Financing Corporation and derived from the Multifamily Tax Subsidy Projects Income Limits published by the United States Department of Housing and Urban Development or 90% of the fair market value rent determined by a rental market study, whichever is less. The property owner must apply to the FHFC to receive a certification notice. The application requires several documents, including but not limited to a rental market study and the rent received for each unit for which the property owner is requesting the exemption. The FHFC will post the deadline to request the certification notice on its website. The deadline must allow adequate time for a property owner to submit a timely application for exemption to the property appraiser by March 1. By March 1, the owner must submit an exemption application form and required documents to the property appraiser. Since this legislation states in subsection 196.1978(3)(b) that sections 196.195 and 196.196 are notwithstanding, regarding criteria for determining nonprofit status of the applicant and charitable use, the criteria in those statutes do not apply. This exemption is not available to units for which the owner has entered into an agreement with FHFC pursuant to Chapter 420 to provide housing to natural persons or families meeting the extremely-low-income, very-low-income, or low-income limits or if the property receives an exemption pursuant to the new section 196.1979, F.S. This amendment first applies to the 2024 tax roll. See Chapter 2023-17, Section 8, Laws of Florida (CS/SB 102), effective July 1, 2023 titled the "Live Local Act."

Note: Legislation enacted in 2023 created section 196.1979, F.S. to authorize counties and cities to adopt ordinances to exempt portions of property used to provide affordable housing. Such ordinance may exempt portions of property housing natural persons or families whose annual household income is greater than 30% and no more than 60% of median annual adjusted gross income or such ordinance may exempt portions of property housing natural persons or families whose annual household income is no greater than 30% of median annual adjusted gross income. -The property must be a multifamily project of at least 50 units at least 20% of which are used to provide affordable housing. The exemption is up to 75% of the assessed value of each unit if fewer than 100% of the residential units are used to provide affordable housing. The exemption is up to 100% of the assessed value if 100% of the residential units are used to provide affordable housing. The portions of property must be rented for an amount no greater than the amount specified by the most recent multifamily rental programs income and rent limit chart posted by the Florida Housing Financing Corporation and derived from the Multifamily Tax Subsidy Projects Income Limits published by the United States Department of Housing and Urban Development or 90% of the fair market value rent determined by a rental market study, whichever is less. The portions of property must not have been cited for code violations on three (3) or more occasions in the past 24 months; must not have been cited for code violations that are still outstanding; and must not have any unpaid fines or charges related to old code violations. An owner must apply to a designated local entity and receive a certification that the property is qualified. The county or city will post the deadline to request the certification notice on its website. The deadline must allow adequate time for a property owner to submit a timely application for exemption to the property appraiser by March 1.

By March 1, the owner must submit an exemption application form and required documents to the property appraiser. The exemption still applies to a residential unit that is vacant on January 1 of the tax year but qualified in the previous year, if the unit is restricted to occupancy by a qualifying tenant and a reasonable effort is being made to lease the unit to an eligible person or family. Since this legislation states in subsection 196.1979(1)(a) that sections 196.195 and 196.196 are notwithstanding, regarding criteria for determining nonprofit status of the applicant and charitable use, the criteria in those statutes do not apply. See Chapter 2023-17, Section 9, Laws of Florida (SB 102), effective July 1, 2023 titled as the "Live Local Act."

Note: Legislation enacted in 2022 amended section 196.1978(2)(a), F.S., to specify the method of calculating the 15-year waiting period for an affordable housing exemption for a multifamily project. The 15 years is calculated based on the earliest of three (3) dates:

1. The effective date of the recorded agreement with the Florida Housing Finance Corporation,
2. The first day of the first taxable year in which the property was placed in service as an affordable housing property, or
3. The date the property received a certificate of occupancy or certificate of substantial completion, allowing the property to be used as affordable housing.

This amendment first applies to the 2023 tax roll. See Chapter 2022-97, Sections 10, 11 and 55, Laws of Florida, (CS/HB 7071), effective July 1, 2022.

Since this legislation states in subsection 196.1978(2)(a) that sections 196.195 and 196.196 are notwithstanding, regarding criteria for determining nonprofit status of the applicant and charitable use, the criteria in those statutes do not apply.

Note: Legislation enacted in 2021 amended section 196.1978(2), Florida Statutes, affordable housing property exemption, removing the ad valorem tax discount of 50 percent and enacting an exemption of 100 percent on multifamily projects that provide housing to extremely-low-income, very-low-income, or low-income families. Such a multifamily project will receive the exemption beginning on January 1 of the year following the 15th year of such an agreement. See Chapter 2021-31, Section 10, Laws of Florida, (HB 7061), effective July 1, 2021.

Note: The 2020 Legislature enacted two amendments to section 196.1978(1), F.S. in Chapter 2020-10, section 10, Laws of Florida, effective upon becoming a law April 8, 2020 and operating retroactive to January 1, 2020; and Chapter 2020-10, section 11, Laws of Florida, effective January 1, 2021.

- Section 10 amended section 196.1978(1), F.S., to provide, for property used to provide affordable housing, additional criteria under which vacant units are treated as exempt portions of the affordable housing property. These criteria are: if a recorded land use restriction agreement requires all residential units within the property to be used in a manner that qualifies for the exemption under this subsection and if the vacant units are being offered for rent. effective upon becoming a law and will operate retroactively to January 1, 2020. See chapter 2020-10, Section 10, Laws of Florida (CS/HB 7097).

- Section 11 amended section 196.1978(1), F.S., to provide legislative intent for property used to provide affordable housing, that if the sole member of a limited liability company that owns the property is also a limited liability company that is disregarded as an entity for federal income tax purposes, the property will be treated as owned by the sole member of the limited liability company that owns the limited liability company that owns the property. Also, units whose occupants' income no longer meet the income limits, but whose income met the income limits at the time they became tenants, shall be treated as exempt portions of the affordable housing property. This amendment is effective January 1, 2021. See Chapter 2020-10, Section 11, Laws of Florida (CS/HB 7097).

Note: Legislation enacted in 2017 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).

Other Exemptions

Labor organization property. See section 196.1985, F.S

Community centers. See section 196.1986, F.S.

Historic properties. See section 196.1997, F.S.

Historic properties open to the public. See section 196.1998, F.S.

Not for profit sewer and water companies. See section 196.2001, F.S.

Section 501(c)(12), I.R.C., not-for-profit water and wastewater systems. See section 196.2002, F.S.

Historic property used for certain commercial or nonprofit purposes. See section 196.1961, F.S.

New and expanding businesses. See section 196.1995, F.S.

Renewable energy source devices. See section 196.182, F.S.

Note: Legislation enacted in 2017 created section 196.182, F.S., to provide an exemption, from the tangible personal property tax, of 80 percent of the assessed value of certain renewable energy source devices, if the device, as defined in s. 193.624, is considered tangible personal property and:

(a) Is installed on real property on or after January 1, 2018;
(b) Was installed before January 1, 2018, to supply a municipal electric utility located within a consolidated government; or
(c) Was installed after August 30, 2016, on municipal land as part of a described project supplying a municipal electric utility for certain purposes.

This legislation also specifies conditions under which the exemption would not apply, and specifies conditions under which the exemption would apply to devices affixed to property owned or leased by the U.S. Department of Defense. This change is effective July 1, 2017, and applies to assessments and administrative reviews beginning in 2018. See Chapter 2017-118, Sections 3 and 8, Laws of Florida (CS/SB 90).

Note: Legislation enacted in 2014 amended section 196.1995, F.S., to provide that, in order to qualify for the economic development exemption, the improvements to real property must be made or the tangible personal property must be added or increased after approval by motion or resolution of the local governing body, subject to ordinance adoption, or on or after the day the ordinance is adopted.

* This legislation was effective May 12, 2014, and applies to assessments and administrative reviews beginning in 2015. See Chapter 2014-40, Section 1, Laws of Florida (HB 7081).

Note: Legislation enacted in 2016 amended sections 196.012 and 196.1995, F.S, to provide:

- Language to describe the new businesses and expansions of existing businesses that are eligible to receive the economic development property tax exemption. It states that the new businesses and expansions of existing businesses that are in areas that were designated as enterprise zones under Ch. 290, F.S., as of December 30, 2015, but not in a brownfield area, may qualify for the property tax exemption only if the local governing body approves by motion or resolution, subject to ordinance adoption, or by ordinance enacted before December 31, 2015.

- All data center equipment for a data center will be exempt from property taxation for the term of the approved exemption.

- Any exemption granted under this section will remain in effect for up to 10 years with respect to any particular facility, or up to 20 years for a data center, regardless of any change in the authority of the county or municipality to grant these exemptions or the expiration of the Enterprise Zone Act under Ch. 290, F.S.

- This law's amendments to ss. 196.012 and 196.1995, F.S., which relate to the property tax exemption for certain enterprise zone businesses, are remedial in nature and apply retroactively to December 31, 2015.

See Chapter 2016-220, Sections 2, 3, and 4, Laws of Florida (HB 7099).

Space laboratories and carriers. See section 196.1999, F.S.

Note: Legislation enacted in 2023 created section 196.196(6), F.S., to provide that property used as a parsonage, burial grounds, or tomb and owned by a house of public worship is used for a religious purpose. Amendments made by this act are remedial and clarifying in nature and do not provide a basis for an assessment of any tax or create a right to a refund of any tax paid before July 1, 2023. See Chapter 2023-157, Sections 10 and 11, Laws of Florida (HB 7063), effective July 1, 2023.

Biblical history display. See section 196.1987, F.S.

Note: Hospitals. Legislation enacted in 2021 repealed section 193.019, F.S., relating to the exemption for hospitals and community benefit reporting. See Chapter 2021-31, Section 1, Laws of Florida, (HB 7061), effective May 21, 2021. Legislation enacted in 2020 had created section 193.019, F.S., effective January 1, 2022, relating to the exemption for hospitals, and providing for community benefit reporting. See Chapter 2020-10, Section 2, Laws of Florida (CS/HB 7097) effective January 1, 2022.

Hospitals, nursing homes, and homes for special services. See section 196.197, F.S.

Note: Legislation enacted in 2017 amended section 196.012(9), F.S., to include in the terms "nursing home" or "home for special services," institutions that possess a valid license under Chapter 429, Part I, F.S., and to make this amendment applicable to the 2017 property tax roll. This change was effective May 25, 2017 and applies to assessments and administrative reviews beginning in 2017. See Chapter 2017-36, Sections 3 and 4, Laws of Florida (HB 7109).

Nonprofit homes for the aged. See section 196.1975, F.S.

Note: Legislation enacted in 2017 amended section 196.1975(4)(c), F.S., to provide that a not-for-profit corporation applying for an exemption for units or apartments under paragraph (4)(a) of the statute must file, with the application, an affidavit from each person who occupies a unit stating the person's income; the corporation is not required to provide an affidavit from a resident who is a totally and permanently disabled veteran who meets the requirements of s. 196.081, F.S. The amendment also provides that, if the property appraiser determines that additional documentation proving an affiant's income is necessary, the property appraiser may request it. This change was effective July 1, 2017, and applies to assessments and administrative reviews beginning in 2018. See Chapter 2017-36, Sections 5 and 59, Laws of Florida (HB 7109).

Proprietary continuing care facilities. See section 196.1977, F.S.

Licensed child care facilities located in an enterprise zone. See section 196.095, F.S.

PART 3: Administrative Reviews of Denials of Property Classifications

The Florida Constitution provides for certain "classifications" of property for assessment purposes.

"Property Classification" or "Classification" means a classification of property for assessment purposes according to applicable statutory criteria, including those in Chapter 193, Part II, F.S., and an assessment of the property at its classified use value.

"Classified use value" means the value of a property that is based solely on the property's character or use and based on the applicable statutory criteria, without regard to the property's highest and best use. See section 192.001(2), F.S.

The sections below contain information on the administrative review of denials of classifications, including information on the statutory criteria for classifications.

The Administrative Review Process for Denials of Classifications

Set forth below is a sequence of general procedural steps for Boards and special magistrates to follow in administrative reviews of denials of classifications in order to fulfill the procedural requirements of section 194.301, F.S., and Rule 12D-9.027(4), F.A.C.

This sequence of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. See Rule 12D-9.027(1), F.A.C.

"The board or special magistrate shall not be required to make, at any time during a hearing, any oral or written finding, conclusion, decision, or reason for decision." See Rule 12D-9.025(9), F.A.C.

"The board or special magistrate has the discretion to determine whether to make such determinations during a hearing or to consider the petition and evidence further after the hearing and then make such determinations." See Rule 12D-9.025(9), F.A.C.

Under Rule 12D-9.027(4), F.A.C., in administrative reviews of denials of classifications, the Board or special magistrate shall follow this sequence of general procedural steps:

1. Consider the admitted evidence presented by the parties;

2. Identify the particular property classification issue that is the subject of the petition;

3. Identify the statutory criteria that apply to the property classification that was identified as the issue under administrative review;

4. Identify and consider the essential characteristics of the petitioned property or the property owner, as applicable, based on the statutory criteria that apply to the issue under administrative review;

5. Identify and consider the basis used by the property appraiser in issuing the denial of property classification for the petitioned property; and

6. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's denial is incorrect and the property classification should be granted because all of the applicable statutory criteria are satisfied.

The Board or special magistrate must decide whether the admitted evidence, regardless of which party presented the evidence, has sufficient weight (in relevance and credibility) to legally justify overturning the property appraiser's original determination and granting the property classification.

If the admitted evidence proves the petitioner's case by the greater weight of the evidence, the original determination must be overturned and the petition granted.

If the admitted evidence does not legally justify overturning the property appraiser's original determination, the determination must be upheld.

Statutory Criteria for Property Classifications

The following sections of this module contain information on the statutory criteria that must be met to qualify for the property classifications available in Florida.

* In the case of the more common classifications, this training presents more detail on the applicable statutory criteria.

* Information on less common classifications not specifically addressed in this training can be found in Chapter 193, Part 2, F.S.

Statutory Criteria for Different Types of Property Classifications

Statutory criteria for the following types of property classifications are presented below.

Types of Property Classifications

- Agricultural Property
- Pollution Control Devices
- Noncommercial Recreational and Conservation Lands
- Historic Property
- High-water Recharge Property
- Working Waterfront Property

- Renewable Energy Source Device

Agricultural Property

Authorized in Article VII, Section 4(a), of the Florida Constitution.

The agricultural classification is governed by sections 193.451, 193.461, 193.4615, and 193.462, F.S.

The property owner must apply for classification as agricultural property by March 1. However, section 193.462, Florida Statutes, allows the Board to grant the classification even when an application was not made by the statutory deadline.

Qualifying property must be used for "bona fide agricultural purposes," meaning good faith commercial usage. In determining bona fide agricultural use, the property appraiser may consider the following factors: See section 193.461(3)(b)1., F.S.

a. The length of time the land has been utilized for bona fide agricultural purposes;

b. Whether the use has been continuous;

c. The purchase price paid;

d. Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment;

e. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices;

f. Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease; and

g. Such other factors as may become applicable.

"Agricultural Purposes" include but are not limited to: See section 193.461(5), F.S.

* Horticulture
* Floriculture
* Viticulture
* Forestry
* Dairy
* Livestock
* Poultry
* Bees

* Pisciculture (when the land is used primarily for the production of tropical fish)
* Aquaculture
* Sod Farming
* All forms of farm products as defined in section 823.14(3), F.S., and farm production

Under section 193.461(3)(e), F.S., land that has received an agricultural classification from the value adjustment board or a court of competent jurisdiction is entitled to receive such classification in any subsequent year until: such agricultural use of the land is abandoned or discontinued; the land is diverted to a nonagricultural use; or the land is reclassified as nonagricultural pursuant to section 193.461(4), F.S.

* In Tilton v. Gardner, 52 So.3d 771 (Fla. 5th DCA 2010), the court, in reviewing a denial of an agricultural classification that had been granted by the value adjustment board in a prior assessment year under subsection 193.461(3)(e), F.S., applied the physical activity test in determining whether record evidence was sufficient to justify continuing the agricultural classification.

    * The Florida Supreme Court has held that the key to determining whether an agricultural classification should be granted is the actual physical activity on the land. See Schultz v. Love PGI Partners, LP, 731 So.2d 1270, 1271 (Fla. 1999). Also, see Straughn v. Tuck, 354 So.2d 368, 370 (Fla. 1977).

Agricultural Property: Dispersed Water Storage Programs

* Legislation enacted in 2014 amended Section 193.461, F.S., to provide that agricultural lands that participate in a dispersed water storage program under a contract with the Department of Environmental Protection or a water management district, which requires flooding of land, will retain the agricultural classification as long as the lands are included in the program or successor programs.

* The property appraiser will assess these lands as nonproductive agricultural lands.

* Lands that participate and are diverted from an agricultural use to a nonagricultural use shall be assessed under Section 193.011, F.S.

Agricultural Property: Quarantine and Eradication Programs

Agricultural land taken out of production due to a state or federal quarantine or eradication program shall continue to be classified as agricultural property for the duration of such program or successor program. See Section 193.461(7), F.S.

* If the land in the program lies fallow or is used for non-income producing purposes, the land shall have a de minimus value of no more than $50 per acre.

* If the land in the program is used for another permissible agricultural use, the land shall be assessed based on that usage.

* If the land is converted to a nonagricultural use, it will be assessed as nonagricultural property under section 193.011, F.S.

Note: Legislation enacted in 2016 amended section 193.461(7)(a), F.S., to provide that lands classified for assessment purposes as agricultural lands that a state or federal eradication or quarantine program takes out of production will remain agricultural lands for the remainder of the program. Lands that these programs convert to nonincome-producing uses will continue to be assessed at a minimum value of up to $50 per acre on a single-year assessment methodology.

This legislation identified the Citrus Health Response Program as a state or federal eradication or quarantine program, and allows land to retain its agricultural classification for five years after the date of execution of a compliance agreement between the landowner and the Department of Agriculture and Consumer Services (DACS) or a federal agency, as applicable, for this program or successor programs.

Lands under these programs that are converted to fallow or otherwise nonincome-producing uses are still agricultural lands assessed at a minimal value of up to $50 per acre on a single-year assessment methodology while fallow or used for nonincome-producing purposes. Lands under these programs that are replanted in citrus according to the requirements of the compliance agreement are classified as agricultural lands and are assessed at a minimal value of up to $50 per acre, on a single-year assessment methodology, during the five-year term of agreement.

See Chapter 2016-88, Sections 1 and 5, Laws of Florida (CS/CS/HB 749).

Note: Legislation enacted in 2018 created section 193.461(7)(c), F.S., to require agricultural lands that incur damage from a natural disaster, for which the Governor declares a state of emergency and results in halting agricultural production, to be classified as agricultural lands for five years following termination of the emergency declaration. However, if the lands are diverted from agricultural use to nonagricultural use during or after the five-year recovery period, the property appraiser must assess the lands at just value under s. 193.011, F.S. This provision applies retroactively to natural disasters that occurred on or after July 1, 2017. See Chapter 2018-84, Section 1, Laws of Florida (CS/CS/SB 740).

Note: Legislation enacted in 2018 created section 193.461(8), F.S., to provide that lands classified as agricultural, which are not being used for agricultural production due to a hurricane that made landfall in this state during 2017, must continue to be classified as agricultural through December 31, 2022, unless the lands are converted to a nonagricultural use. Lands converted to nonagricultural use are not covered by this subsection and must be assessed as otherwise provided by law. This amendment

applies to the 2018 tax roll. See Chapter 2018-118, Sections 12 and 13, Laws of Florida (CS/HB 7087).

Agricultural Property: Special Types

See Sections 193.451 and 193.4615, F.S.
In addition to the classified use assessments of agricultural land discussed previously, there are additional provisions which address specific kinds of agricultural property.

These provisions usually deal with the assessment of tangible personal property and instruct that said property should either have no value placed upon it or that it should be valued as salvage.

Items with no value:

* Growing annual crops
* Nonbearing fruit trees
* Raw agricultural products (until offered for sale)

Items valued as salvage:

* Citrus grading and classification equipment leased from the Department of Agriculture
* Obsolete agricultural equipment

Agritourism

Note: Legislation enacted in 2022 amended section 570.85, F.S., relating to agritourism, to remove a requirement that agritourism be a "secondary" stream of revenue for a bona fide agricultural operation. The requirement of primary use for agriculture in section 193.461(3)(b), F.S., is retained after amending the agritourism statute. Amended section 570.87, F.S. to provide an agricultural classification pursuant to section 193.461, F.S. may not be denied or revoked solely due to the conduct of agritourism activity on a bona fide farm or the construction, alteration, or maintenance of a nonresidential farm building, structure, or facility on a bona fide farm which is used to conduct agritourism activities. So long as the building, structure, or facility is an integral part of the agricultural operation, the land it occupies shall be considered agricultural in nature. However, such buildings, structures, and facilities, and other improvements on the land, must be assessed under section 193.011, F.S. at their just value and added to the agriculturally assessed value of the land. See Chapter 2022-77, Laws of Florida, (SB 1186), effective July 1, 2022.

The Florida Right to Farm Act states an intent to provide protection for reasonable agricultural and complementary agritourism activities conducted on farm land. See section 823.14, F.S.

Pollution Control Devices

This classification is governed by Section 193.621, F.S., which:

* States that pollution control devices installed in manufacturing or industrial plants or installations shall be valued as salvage.

* Provides that demolition and reconstruction of part of such a facility for the purpose of reducing pollution, and which does not substantially increase the productivity of the facility, shall not increase the facility's assessed value.

* Allows the property appraiser to seek a recommendation from the Department of Environmental Protection as to what constitutes pollution control.

* Allows the Department of Environmental Protection to promulgate rules concerning this exemption.

Noncommercial Recreation and Conservation Lands

This classification is governed by Section 193.501, F.S.

To receive this classification, property must be subject to a conservation easement, qualified as environmentally endangered land, designated as conservation land, or used for outdoor recreational or park purposes.

In addition, the owner must convey all rights to develop the property to a public entity or enter into a covenant with a public entity, for a period no less than ten years, providing that the property shall be subject to one or more of the conservation restrictions provided in Section 704.06(1), F.S. and shall not be used by the owner except for outdoor recreational purposes.

If the covenant or conveyance extends for more than ten years, the property shall be valued considering no factors other than those relative to its value for the present use as restricted by the covenant or conveyance.

If the covenant has less than ten years left, the property will be valued at just value considering the restrictions imposed by the covenant.

If the owner seeks to end the covenant before its expiration, he or she will be liable for all deferred tax liability plus interest.

Historic Property

There are two separate sections of the Florida Statutes which enact two separate programs for historic properties.

* Section 193.503, F.S., applies to historic properties used for commercial or certain nonprofit purposes.

* Section 193.505, F.S., deals with other historically significant property.

Historic Property: Section 193.503, F.S.

The criteria for qualifying for this classification are as follows:

* Classification under this section must be authorized by the city or county, in which case it applies to that entity's tax levy;

* An application for classification must be filed by March 1;

* The property must be used for commercial purposes or by a not-for-profit organization under Section 501(c)(3) or (6) of the Internal Revenue Code;

* The property must be: listed in the National Register of Historic Places, part of a National Register Historic District, or designated as historic or part of a historic district under a local preservation ordinance;

* The property must be maintained in good condition to preserve historic value; and

* The property must be open to the public 40 hours per week for 45 weeks per year or for 1800 hours annually.

The classification is lost if the owner fails to continue to meet these criteria.

Historic Property: Section 193.505, F.S.

The criteria for qualifying for this classification are as follows:

* The property must be: on the National Register of Historic places, in a certified locally designated historic district, or found to be historic by the Division of Historical Resources or a local historic preservation board;

* The owner must convey all rights to develop the property to the county governing board or enter into a covenant for a period of no less than ten years providing that the property shall not be used for any purpose inconsistent with historic preservation or the historic qualities of the property;

* The county must agree to accept the development right or covenant and must designate the property as historic by formal resolution;

* The county may not transfer development rights or use them in a manner inconsistent with historic preservation or the historic qualities of the property;

* If the owner seeks to end the covenant before its expiration, he or she will be liable for all deferred tax liability plus interest; and

* When the covenant ends, the owner is responsible for all deferred tax liability plus interest.

High-water Recharge Property

The county or city must adopt an ordinance allowing for this classification. See Section 193.625, F.S.

* The ordinance shall provide the formula for assessing property which qualifies for this classification.

* Land must be used for "bona fide high-water recharge purposes."

* Application for this classification must be made by March 1.

* The land owner must contract to use the land for high-water recharge purposes for five years or more.

To qualify as being used for "bona fide high-water recharge purposes": See Subsection 193.625(3)(b), F.S.

* The land use must have been continuous.

* The land use must be vacant residential, vacant commercial, vacant industrial, vacant institutional, nonagricultural, or single-family residential.

* The maintenance of one single-family residential dwelling on part of the land does not in itself preclude a high-water recharge classification.

* The land must be located within a prime groundwater recharge area or in an area considered by the appropriate water management district to supply significant groundwater recharge.

* Significant groundwater recharge shall be assessed by the appropriate water management district on the basis of hydrologic characteristics of the soils and underlying geologic formations.

* The land must not be receiving any other special classification.

* There must not be in the vicinity of the land any activity that has the potential to contaminate the ground water, including, but not limited to, the presence of:

    * Toxic or hazardous substances;

  - Free-flowing saline artesian wells;
  - Drainage wells;
  - Underground storage tanks; or
  - Any potential pollution source existing on a property that drains to the property seeking the high-water recharge classification**.**

* The parcel of land must be at least ten acres.

Working Waterfront Property

The Florida Constitution sets forth criteria for classifying and valuing working waterfront property.

The provisions of Amendment 6, working waterfronts, have been placed in the Florida Constitution at Article VII, Section (4)(j), effective for the 2010 assessment year.

These provisions state as follows:

> *"(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:*
>
> *a. Land used predominantly for commercial fishing purposes.*
>
> *b. Land that is accessible to the public and used for vessel launches into waters that are navigable.*
>
> *c. Marinas and drystacks that are open to the public.*
>
> *d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.*
>
> *(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law."*

The constitutional amendment on working waterfronts is self-executing with authorization for the Legislature to elaborate by general law.

In the 2009 and 2010 sessions, the Legislature considered bills that did not pass but that would have contained guidance for classifying and valuing working waterfront property. These bills would have applied to the 2010 tax year if they had become law.

Amendment 6, creating classification of property used for working waterfronts, is effective for the 2010 year in the absence of legislation.

Renewable Energy Source Device Classification

* Legislation enacted in 2013 created section 193.624, F.S., to provide for assessment of a "renewable energy source device" installed on or after January 1, 2013, to new and existing residential real property.

* When determining the assessed value of real property used for residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered.

* This requirement is an exception to certain provisions relating to assessment of changes, additions, or improvements in sections 193.155 and 193.1554, F.S.

* This legislation became effective July 1, 2013 and applies to assessments and administrative reviews beginning in 2014. See Chapter 2013-77, Sections 1, 2, and 3, Laws of Florida (HB 277).

~~**Note:** Legislation enacted in 2017 amended section 193.624, F.S., to provide, for nonresidential real property, that 80 percent of the just value attributable to a renewable energy source device may not be considered in determining the assessed value of the property; this provision applies to devices installed on nonresidential property on or after January 1, 2018, except in a fiscally constrained county for which application for comprehensive plan amendment or planned unit development zoning is made by December 31, 2017. This change became effective July 1, 2017, and applies to assessments and administrative reviews beginning in 2018. See Chapter 2017-118, Sections 2 and 8, Laws of Florida (CS/SB 90).~~

PART 4: Administrative Reviews of Determinations of Changes of Ownership or Control or Qualifying Improvement

Assessment Increase Limitation for Homestead Real Property

Homestead real property shall be assessed at just value on the January 1 following a change of ownership. See Section 193.155, F.S.

Under Section 193.155(3)(a), F.S., a change of ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, except:

1. If after transfer, the same person is entitled to the homestead exemption as was previously entitled and the transfer:

   a. Is to correct an error; or

   b. Is between legal and equitable title; or

c. Is by an instrument in which the owner is both grantor and grantee of the real property and one or more other individuals are additionally named as grantee. However, a change of ownership occurs if such individual applies for a homestead exemption on the property; or

Note: Legislation enacted in 2021 added subparagraph d:

d. Is by means of an instrument in which the owner entitled to the homestead exemption is listed as both grantor and grantee of the real property and one or more other individuals, all of whom held title as joint tenants with rights of survivorship with the owner, are named only as grantors and are removed from the title; or

See Chapter 2021-31, Section 2, Laws of Florida, (HB 7061), effective July 1, 2021.

Note: Legislation enacted in 2013 added what is now subparagraph e:

e. if the transfer is to a person who is entitled to the homestead exemption both before and after the transfer and the person is a lessee entitled to the homestead exemption under section 196.041(1), F.S.

See Chapter 2013-72, Section 4, Laws of Florida (SB 1830).

2. If the transfer is between husband and wife including a change or transfer to a surviving spouse or a transfer due to a dissolution of marriage; or

3. If the transfer occurs by operation of law under Section 732.401, F.S.; or

4. If on the death of the owner, the transfer is between the owner and another who is a permanent resident and is legally or naturally dependent upon the owner; or

Note: Legislation enacted in 2021 added subparagraph 5.:

5. The transfer occurs with respect to a property where all of the following apply:
   a. Multiple owners hold title as joint tenants with rights of survivorship;
   b. One or more owners were entitled to and received the homestead exemption on the property;
   c. The death of one or more owners occurs; and
   d. Subsequent to the transfer, the surviving owner or owners previously entitled to and receiving the homestead exemption continue to be entitled to and receive the homestead exemption.

See Chapter 2021-31, Section 2, Laws of Florida, (HB 7061), effective July 1, 2021.

Assessment Increase Limitation for Non-Homestead Real Property

The types of property eligible for the 10 percent cap are provided under Section 193.1554, F.S., and Section 193.1555, F.S.

Section 193.1554, F.S., relates to the assessment of non-homesteaded residential property that contains nine or fewer dwelling units that does not receive a homestead

exemption under Section 196.031, F.S., including vacant property zoned and platted for residential use.

Section 193.1555, F.S., relates to residential property with 10 or more units and to non-residential real property.

“Non-residential real property” means real property that is not subject to the assessment limitations set forth in subsection 4(a), (b), (c), (d), or (g), Article VII of the Florida Constitution. This involves property classified agricultural, high-water recharge, non-commercial recreational, conservation, and homestead limited increase property.

When ownership or control of the property changes, the property is subject to reassessment at just value.

Also, when a qualifying improvement is made on a non-homestead property that has 10 or more dwelling units, or is non-residential property, under Section 193.1555(5), F.S., the property is required to be assessed at just value as of January 1 of the year following the qualifying improvement.

A qualifying improvement means any substantially completed improvement that increases the just value of the property by at least 25 percent. See section 193.1555(5)(a), F.S.

“Improvement” means an addition or change to land or buildings which increases their value and is more than a repair or a replacement. See section 193.1555(1)(b), F.S.

A person or entity that owns non-homestead property subject to receiving the 10 percent assessment increase limitation under Sections 193.1554 or 193.1555, F.S., must notify the property appraiser of the county where the property is located of any change of ownership or control as defined in Sections 193.1554(5) and 193.1555(5), F.S. See section 193.1556, F.S.

Rule 12D-8.00659, F.A.C., (Notice of Change of Ownership or Control of Non-Homestead Property) contains detailed provisions explaining the change in ownership and control. Forms are included for the owner to notify the property appraiser as provided in sections 193.1554 and 193.1555, F.S.

Module 10:
Administrative Reviews of
Assessment Difference Transfers and Tax Deferrals

Training Module 10 addresses the following topics:

PART 1

Administrative Reviews of Assessment Difference Transfers

- Overview of Assessment Difference Transfers (Portability)
- Petitions on Determinations Made in the New Homestead County
- Petitions on Determinations Made in the Previous Homestead County
- Procedures for a Hearing in the Previous Homestead County
- Procedures for a Cross-county Hearing in the New Homestead County
- Statutory Criteria for Assessment Difference Transfers
- The Administrative Review Process for Assessment Difference Transfers

PART 2

Administrative Reviews of Tax Deferrals and Penalties

- Overview of Tax Deferrals
- Overview of Penalties on Tax Deferrals
- Unique Aspects of Petitions on Tax Deferrals and Penalties
- The Administrative Review Process for Tax Deferrals and Penalties

Learning Objectives

After completing this training module, the learner should be able to:

- Recognize and apply the definition of “assessment difference”
- Recognize and apply the definition of “portability” and “assessment difference transfer”
- Identify the two general locations where portability may apply
- Recognize where a portability petition must be filed
- Identify and apply the requirements for petitions on determinations made in the new homestead county
- Identify and apply the requirements for petitions on determinations made in the previous homestead county
- Recognize and apply the procedures for a hearing in the previous homestead county
- Identify and apply the procedures for a cross-county hearing in the new homestead county
- Identify and apply the statutory criteria for assessment difference transfers
- Apply the administrative review process for assessment difference transfers
- Recognize how tax deferrals differ from exemptions
- Identify the property types for which tax deferrals could apply
- Identify when penalties on tax deferrals apply

- Recognize the unique aspects of petitions on tax deferrals and penalties
- Apply the administrative review process for tax deferrals and penalties

PART 1

Overview of Assessment Difference Transfers (Portability)

Under a constitutional amendment passed in January 2008, along with 2008 legislation, a taxpayer may qualify to transfer the difference between the just value and assessed value of his or her previous homestead property to a new homestead property.

"Assessment difference" means the difference between just value and assessed value that can be transferred from a previous homestead property to a new homestead property.

"Portability" and "assessment difference transfer" mean the assessment, at less than just value, of a new homestead property based on the transfer of an assessment difference from a previous homestead property after the previous homestead has been abandoned.

Subsection 193.155(8), F.S., sets time limits for qualifying for an assessment difference transfer and sets limitations on the amount of the assessment difference that can be transferred.

To qualify for transfer of an assessment difference, a homestead property owner must timely file a portability application with the property appraiser on a separate form.

* This portability application should be filed along with the homestead exemption application for the new residence.

Portability may apply to a new homestead property located in the same county as the previous homestead property or may apply to a new homestead property located in a county other than the previous homestead county.

When a property owner applies for portability in a county other than the previous homestead county, the property appraiser in the previous homestead county is required to provide the amount of the assessment difference for the previous homestead to the property appraiser in the new homestead county.

* Therefore, in cases where two counties are involved, the property appraiser in each county must take actions that determine whether portability is granted and determine the amount of the transfer.

Some of the criteria for qualifying for portability and calculating allowable amounts for transfer are complex, especially when applied to multiple owners who separate, join

together, or transfer from one county to another.

The shares of the assessment difference cannot be sold, transferred, or pledged to any taxpayer, except by sworn irrevocable designation of ownership shares between husband and wife as described in Chapter 2012-193, Section 5, Laws of Florida.

* In the case of a husband and wife abandoning jointly titled property, the husband and wife may designate the ownership share to be attributed to each spouse by following the procedure in paragraph (f) of subsection 193.155(8), F.S. To qualify to make such a designation, the husband and wife must be married on or before the date they abandon the jointly owned property. See Chapter 2012-193, Section 5, Laws of Florida, amending subsection 193.155(8)(d), F.S.

* A husband and wife abandoning jointly titled property and who wish to designate the ownership share of the previous homestead to be attributed to each person for purposes of subsection 193.155(8)(d), F.S., must file a form with the property appraiser in the previous homestead county. The filed form must include a sworn statement by each person designating the ownership share of the abandoned homestead to be attributed to each person for purposes of portability. Such a designation of ownership shares, once filed with the previous property appraiser, is irrevocable and cannot be changed. See Chapter 2012-193, Section 5, Laws of Florida, creating subsection 193.155(8)(f), F.S.

More information on the applicable criteria is presented later in this module in a section titled “Statutory Criteria for Assessment Difference Transfers.”

Rule 12D-9.028, F.A.C., applies to the review of denials of assessment limitation difference transfers and to the amount of an assessment limitation difference transfer.

No adjustment to the just, assessed, or taxable value of the previous homestead parcel may be made pursuant to a petition under Rule 12D-9.028, F.A.C.

Petitions on Determinations Made in the New Homestead County

A portability petition must always be filed in the county where the new homestead property is located.

However, in cases where two counties are involved, the law allows the petitioner to appeal the actions of the property appraiser in the new homestead county and the actions of the property appraiser in the previous homestead county.

If only a part of a transfer of assessment difference is granted by a property appraiser, the notice of proposed property taxes (TRIM notice) functions as notice of the taxpayer’s right to appeal to the Board. See Rule 12D-9.028(2), F.A.C.

The Department has provided Form DR-490PORT for property appraisers to use in notifying taxpayers of denials of portability.

To appeal either a denial of a transfer or the amount of a transfer, a taxpayer may file a petition with the Board in the new homestead county using Form DR-486PORT. See Rule 12D-9.028(2) and (3), F.A.C.

Form DR-486PORT is available on the Department's website at the following link: http://floridarevenue.com/property/Pages/VAB.aspx

This petition may be filed at any time during the taxable year by the 25th day following the mailing of the notice of proposed property taxes as provided in Section 194.011, F.S. See Rule 12D-9.028(2), F.A.C.

In hearings held in the new homestead county, the Board or special magistrate shall review the application and accompanying evidence presented to the property appraiser by the petitioner and shall hear the petition for portability. See Rule 12D-9.028(3), F.A.C.

Portability petitions shall be heard by an attorney special magistrate if the Board uses special magistrates. See Rule 12D-9.028(3), F.A.C.

NOTE: When the petitioner indicates on the completed petition that he or she is appealing the actions of the property appraiser in the previous homestead county, it is necessary for two hearings to be held.

* The first of these two hearings must be held in the county where the previous homestead property is located, and the second hearing must be held in the county where the new homestead property is located.

Petitions on Determinations Made in the Previous Homestead County

Under Rule 12D-9.028(5), F.A.C., the petitioner may file a petition in the new homestead county when the petitioner does not agree with either:

1. The denial by the property appraiser in the previous homestead county of an assessment limitation difference; or

2. The amount of the assessment limitation difference as determined by the property appraiser in the previous homestead county.

A taxpayer who wants to appeal the action of the property appraiser in the previous homestead county must so indicate by checking the appropriate box on the portability petition (Form DR-486PORT) filed with the Board clerk in the new homestead county. See Rule 12D-9.028(4), F.A.C.

Upon receiving the completed petition from the taxpayer, the Board clerk in the new homestead county shall complete Form DR-486XCO and send it, along with the taxpayer's petition, to the Board clerk in the previous homestead county.

When the Board clerk in the previous homestead county receives the completed Form DR-486XCO and taxpayer's petition, that Board clerk must file these two documents as a petition to the Board in the previous homestead county. See Rule 12D-9.028(6)(c), F.A.C.

Form DR-486XCO is available on the Department's website at the following link: http://floridarevenue.com/property/Pages/VAB.aspx

* No filing fee is required in the previous homestead county. See Rule 12D-9.028(6)(c), F.A.C.

If a Form DR-486XCO is properly filed, it operates as a timely petition and creates an appeal to the Board in the previous homestead county on all issues surrounding the previous assessment difference for the taxpayer involved. See Rule 12D-9.028(5) and (6)(a), F.A.C.

Then, under Rule 12D-9.028(6)(b), F.A.C., the Board clerk in the previous homestead county shall set the petition for hearing and send a notice of hearing to:

1. The petitioner(s);

2. The property appraiser in the previous homestead county; and

3. The property appraiser in the new homestead county.

Then, the Board or special magistrate in the previous homestead county shall hear the petition.

* If the Board in the previous homestead county has already adjourned, it shall reconvene to ensure that the petition is heard and a final decision is issued.

A taxpayer may not petition to have the just, assessed, or taxable value of the previous homestead changed. See Rule 12D-9.028(6)(a), F.A.C.

NOTE: Unless the petitioner indicates on the completed petition that he or she is appealing the actions of the property appraiser in the previous homestead county, it is not necessary to send the petition to the Board clerk in the previous homestead county or to hold a hearing in the previous homestead county.

Procedures for a Hearing in the Previous Homestead County

If the Board in the previous homestead county uses special magistrates, the petition shall be heard by an attorney special magistrate. See Rule 12D-9.028(6)(d), F.A.C.

The petitioner may attend such hearing and present evidence, but need not do so. See Rule 12D-9.028(6)(d), F.A.C.

If the petitioner does not appear at the hearing, the hearing shall go forward. See Rule 12D-9.028(6)(d), F.A.C.

The Board or special magistrate shall obtain the petition file from the Board clerk. See Rule 12D-9.028(6)(d), F.A.C.

The Board or special magistrate shall consider deeds, property appraiser records that do not violate confidentiality requirements, and other documents that are admissible evidence. See Rule 12D-9.028(6)(d), F.A.C.

The petitioner may submit a written statement for review and consideration by the Board or special magistrate explaining why the assessment difference transfer should be granted based on applications and other documents and records submitted by the petitioner. See Rule 12D-9.028(6)(d), F.A.C.

The Board in the previous homestead county shall issue a decision, and the Board clerk shall send a copy of the decision to the Board clerk in the new homestead county. See Rule 12D-9.028(6)(e), F.A.C.

Procedures for a Cross-county Hearing in the New Homestead County

When the Board clerk in the new homestead county receives the decision of the Board in the previous homestead county, the Board clerk must schedule and send notice to the parties of a hearing before the Board or special magistrate in the new homestead county.

The Board in the new homestead county may not hold its hearing until it has received the decision from the Board in the previous homestead county. See Rule 12D-9.028(6)(f), F.A.C.

In hearing the petition, the Board or special magistrate in the new homestead county shall consider the decision of the Board in the previous homestead county on the issues pertaining to the previous homestead and on the amount of any assessment difference for which the petitioner qualifies. See Rule 12D-9.028(6)(f), F.A.C.

The consideration or adjustment of the just, assessed, or taxable value of the previous homestead property is not authorized. See Rule 12D-9.028(7), F.A.C.

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:

1. The maximum amount that can be transferred is $500,000.

2. If the new homestead is lower in value than the old homestead, there is a percentage limitation on the amount that can be transferred as described in section 193.155(8)(b), F.S., and Rule 12D-8.0065, F.A.C.

The Administrative Review Process for Assessment Difference Transfers

The Board or special magistrate is not authorized to adjust the just, assessed, or taxable value of the previous homestead property. See Rule 12D-9.028(1), F.A.C.

Under Rule 12D-9.027(4), F.A.C., in administrative reviews of assessment difference transfers, the Board or special magistrate shall follow this sequence of general procedural steps:

1. Consider the admitted evidence presented by the parties.

2. Identify the particular assessment difference transfer issue that is the subject of the petition.

3. Identify the statutory criteria that apply to the portability assessment difference transfer that was identified as the issue under administrative review.

4. Identify and consider the essential characteristics of the petitioned property or the property owner, as applicable, based on the statutory criteria that apply to the issue under administrative review.

5. Identify and consider the basis used by the property appraiser in issuing the denial or determining the amount of the assessment difference transfer for the petitioned property.

6. Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's denial or partial denial is incorrect and the portability assessment difference transfer should be granted because all of the applicable statutory criteria are satisfied.

The Board or special magistrate must decide whether the admitted evidence, regardless of which party presented the evidence, has sufficient weight (in relevance and credibility) to legally justify overturning the property appraiser's original determination and granting the portability assessment difference transfer.

If the admitted evidence proves the petitioner's case by the greater weight of the evidence, the original determination must be overturned and the petition granted.

If the admitted evidence does not legally justify overturning the property appraiser's original determination, the determination must be upheld.

PART 2

Overview of Tax Deferrals

Hearings on the denial of a tax deferral require the petitioner to show, by a preponderance of the evidence, that he or she has met the statutory criteria for being granted a deferral.

Tax deferrals differ from exemptions and classifications in that they do not reduce the amount of taxes due on the property, but rather tax deferrals allow the taxpayer to defer paying those taxes until a later time.

Essentially, a qualifying taxpayer may defer payment of all or part of the property taxes until such time as the ownership or use of the land changes, at which time all of the unpaid deferred taxes become due and payable.

Currently, there are three types of property tax deferrals, as listed below with references to applicable sections of Florida Statutes.

The 2011 Legislature rewrote the laws pertaining to tax deferrals.

* The three types of homestead deferrals are now handled together in some statutory sections and separately in others.

* See Chapter 2011-151 Laws of Florida (SB 478) effective July 1, 2011.

* The legislation created or amended sections 197.2421, 197.2423, 197.2425 (formerly 197.253), 197.243 (relating to homestead), 197.252 (relating to homestead), 197.2524 (relating to working waterfront and affordable housing), 197.2526 (relating to affordable housing), 197.254, 197.262, 197.263, 197.272, 197.282, 197.292, and 197.301 (relating to penalties).

* The legislation repealed sections 197.242, 197.304, 197.3041, 197.3042, 197.3043, 197.3044, 197.3045, 197.3046, 197.3047, 197.307, 197.3072, 197.3073, 197.3074, 197.3075, 197.3076, 197.3077, 197.3078, and 197.3079, Florida Statutes. See Chapter 2011-151, Section 59, Laws of Florida.

Overview of Penalties on Tax Deferrals

If a taxpayer who applies for a tax deferral willfully files incorrect information, either in the application or in another required return, all deferred taxes and interest become due and a penalty is also imposed.

This penalty may be appealed to the Board.

The burden of proof in these cases is on the petitioner and the standard of proof remains preponderance of the evidence.

Unique Aspects of Petitions on Tax Deferrals and Penalties

Tax deferrals and associated penalties are administered by the tax collector and not by the property appraiser.

* Therefore, the tax collector is a party to these types of petitions and the property appraiser is not.

Petitions to the Board on these matters are made on Form DR-486DP and not on Form DR-486.

A petition regarding a tax deferral shall be considered timely if it is filed within 30 days after the denial is mailed. See section 197.2425, F.S., created by Chapter 2011-151, Section 13, Laws of Florida.

A petition appealing penalties imposed for providing incorrect information regarding a tax deferral is considered timely if filed within 30 days after the penalties are imposed by the tax collector.

The Administrative Review Process for Tax Deferrals and Penalties

The Department does not have detailed rules for administrative reviews of deferrals and penalties involving tax collectors.

Rather, Rule 12D-9.036, F.A.C., provides procedures for petitions on denials of tax deferrals, stating the following:

"(1) The references in these rules to the tax collector are for the handling of petitions of denials of tax deferrals under Section 197.2425, F.S., and petitions of penalties imposed under Section 197.301, F.S."

"(2) To the extent possible where the context will permit, such petitions shall be handled procedurally under this rule chapter in the same manner as denials of exemptions."

The procedures for administrative reviews of denials of deferrals and penalties include those provided for exemptions in Rule 12D-9.027(4)(b) through (g), F.A.C.

* However, the procedures provided in Rule 12D-9.027(4)(a), F.A.C., specifically do NOT apply to administrative reviews regarding deferrals and penalties.

Module 11:
Requirements for Written Decisions

Training Module 11 addresses the following topics:

- Written Decisions and Taxpayer Rights
- General Requirements for Written Decisions
- Required Forms for Written Decisions
- Statements on Board Decisions by the Auditor General
- Statements on Board Decisions by Florida Courts
- Sufficiency of Evidence
- Evaluation of the Relevance of Evidence
- Evaluation of the Credibility of Evidence
- Requirements for Findings of Fact
- Requirements for Conclusions of Law
- Specific Requirements for Findings of Fact and Conclusions of Law
- Reasons for Recommended Decisions and Final Decisions

Learning Objectives

After completing this training module, the learner should be able to:

- Apply taxpayer rights to written decisions
- Identify the conditions under which a written decision is required
- Recognize and properly complete the required forms for written decisions
- Recognize statements from the Auditor General and Florida courts on findings of fact and conclusions of law
- Evaluate the relevance of evidence
- Evaluate the credibility of evidence
- Identify and apply the requirements for findings of fact
- Identify and apply the requirements for conclusions of law
- Identify and apply the specific requirements for findings of fact and conclusions of law
- Recognize the requirements for reasons for upholding or overturning the assessment

Written Decisions and Taxpayer Rights

Florida Statutes provide the following taxpayer right: *"The right to be sent a timely written decision by the value adjustment board containing findings of fact and conclusions of law and reasons for upholding or overturning the determination of the property appraiser."* See Subsections 192.0105(2)(g) and 194.034(2), F.S.

The special magistrate and Board clerk shall observe the petitioner's right to be sent a timely written recommended decision containing proposed findings of fact and proposed

conclusions of law and reasons for upholding or overturning the determination of the property appraiser. See Rule 12D-9.030(1), F.A.C.

The taxpayer has the right to be issued a timely written decision by the Board within 20 calendar days of the last day the Board is in session pursuant to Section 194.032, F.S. See Rule 12D-9.001(2)(k), F.A.C.

The Florida Supreme Court has stated that the lawful issuance of findings of fact and conclusions of law by the Board is a requirement of due process. See Miller v. Nolte, 453 So.2d 397 (Fla. 1984).

General Requirements for Written Decisions

In the value adjustment board process, written decisions include the following:

1. Remand decisions produced by the Board or special magistrate, as applicable;

2. Recommended decisions produced by special magistrates; and

3. Final decisions produced by the value adjustment board.

As used in this training, the terms “findings of fact” and “conclusions of law” include proposed findings of fact and proposed conclusions of law produced by special magistrates in their recommended decisions. See Rule 12D-9.030(5), F.A.C.

When required under Rule 12D-9.029, F.A.C., the Board or special magistrate shall produce a written remand decision that contains findings of fact, conclusions of law, and appropriate directions to the property appraiser. See Rules 12D-9.029(4) and (6), F.A.C.

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.

For each petition not withdrawn or settled, the Board shall produce a written final decision that contains findings of fact, conclusions of law, and reasons for upholding or overturning the property appraiser’s determination. See Rule 12D-9.032(1)(a), F.A.C.

* For all withdrawn or settled petitions, a special magistrate shall not produce a recommended decision and the Board shall not produce a final decision. See Rule 12D-9.021(5), F.A.C.

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.

Each recommended decision and each final decision shall contain sufficient factual and legal information and reasoning to enable the parties to understand the basis for the decision, and shall otherwise meet the requirements of law. See Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

The Board shall issue all final decisions within 20 calendar days of the last day the Board is in session pursuant to Section 194.032, F.S. See Rule 12D-9.032(4), F.A.C.

Required Forms for Written Decisions

For producing recommended decisions and final decisions, the Department prescribes the Form DR-485 series, and any electronic equivalent forms approved by the Department under Section 195.022, F.S. See Rule 12D-9.030(4), F.A.C.

* The Form DR-485 series is available on the Department's website at the following link: http://floridarevenue.com/property/Pages/VAB.aspx

* Boards and special magistrates are required to use forms that are current and up-to-date.

* The Form DR-485 series, or approved electronic equivalent forms, are the only forms that shall be used for producing remand decisions, recommended decisions, and final decisions. See Rules 12D-9.029(4), 12D-9.030(4), and 12D-9.032(5), F.A.C.

* The Form DR-485 series has separate sections for findings of fact and conclusions of law. Additional sheets may be attached to the form if more space is needed to properly complete the required sections listed on the form.

For producing written remand decisions, the Board or special magistrate must correctly complete Form DR-485R, which also has a separate section for appropriate directions to the property appraiser.

For producing recommended decisions on value petitions, an appraiser special magistrate must correctly complete Form DR-485V.

For producing recommended decisions on exemption, classification, or portability petitions, an attorney special magistrate must correctly complete Form DR-485XC.

For producing final decisions, the Board must use Form DR-485V for value petitions and must use Form DR-485XC for exemption, classification, or portability petitions.

Statements on Board Decisions by the Auditor General

The Florida Auditor General reports to and works for the Florida Legislature. Generally, the Auditor General is authorized to conduct performance audits of state and local governments.

Auditor General's Report No. 2006-007, issued in July 2005, contained the results of the Auditor General's performance audit of value adjustment boards.

This report contains criticisms of past written decisions of value adjustment boards.

This Auditor General's report contained the following two statements:

* *"Our review of the written decisions of the special masters and the Boards revealed that 37 percent of the written decisions (52 of 139) from Boards in 11 counties…did not contain sufficient details in the finding of facts section of the written decisions to satisfy the applicable requirements of the above-cited statute and rule."*

* *"We recommend that the Boards review the content of written findings and conclusions, whether heard by the Boards or special masters, and ensure that those findings and conclusions are documented in accordance with Section 194.034(2), Florida Statutes, and Department of Revenue Rule 12D-10.003(5)(a), Florida Administrative Code."*

  Note: Rule 12D-10.003(5)(a), cited by the Auditor General in 2005 as shown above, was later re-numbered to Rule 12D-10.003(3) as part of a rule amendment effective March 30, 2010. Users of these training materials are directed to current Rule 12D-10.003(3), F.A.C.

Statements on Board Decisions by Florida Courts

Florida court decisions have also commented on the inadequacy of some past written records.

The following four statements appear, along with other statements, in a Florida appellate court decision that was critical of a Board's written decision. See Palm Beach Gardens Community Hospital, Inc. v. Nikolits, 754 So.2d 729 (Fla. 4th DCA 1999).

* *"The requirement that the value adjustment board shall contain in its decision findings of fact and conclusions of law and shall contain reasons for upholding or overturning the determination of property appraiser is not discretionary but mandatory."* Also, see Subsection 194.034(2), F.S.

* *"A review of the Record of Decision and Notice of the Value Adjustment Board reveals the total absence of findings of facts and the total absence of reasons for upholding the property appraiser."*

* *"Under the heading 'conclusions of law,' the value adjustment board merely states: 'Petitioner did not overcome burden of proof.'"*

* *"Simply saying, as the board did in this case, that the taxpayer failed to carry his burden of proof is little more than saying, 'sorry, but you lose.'"*

Another Florida appellate court determined that a Board's written decisions were inadequate and did not meet the requirements of law. See Higgs v. Property Appraisal Adjustment Board of Monroe County, 411 So.2d 307 (Fla. 3d DCA 1982).

This court stated the following regarding the Board's decisions.

* *"Eight of the decisions contain no reasons, findings or conclusions at all; twelve give as a reason 'condition of building' or 'condition of house'; three expand upon this by stating 'condition of building (or house) not computed properly'; two say 'land use restricted'; and the remainder variously state 'income factors,' 'set back restrictions,' 'restricted use of land-Old Island District,' 'lot location and restricted use,' and 'due to condition.'"*

* This court then referred to the *"woeful inadequacy of these statements."*

* This court also stated the following regarding the decisions of this Board.

* *"The Board does not seriously contend, and indeed cannot, that the written decisions comport with the law's requirements."*

Thus, Florida courts have expressed the importance of timely, written Board decisions that include appropriate findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser.

Sufficiency of Evidence

When applied to evidence, the term "sufficient" is a test of adequacy. See Rule 12D-9.027(6), F.A.C.

Sufficient evidence is admitted evidence that has enough overall weight, in terms of relevance and credibility, to legally justify a particular conclusion. See Rule 12D-9.027(6), F.A.C.

A particular conclusion is justified when the overall weight of the admitted evidence meets the standard of proof that applies to the issue under consideration. See Rule 12D-9.027(6), F.A.C.

The Board or special magistrate must consider the admitted evidence and determine whether it is sufficiently relevant and credible to reach the "preponderance of the evidence" standard of proof. See Rules 12D-9.025(1)(d), 12D-9.027(5), and 12D-9.027(6), F.A.C.

Evaluation of the Relevance of Evidence

For administrative reviews, "relevant evidence" is evidence that is reasonably related, directly or indirectly, to the statutory criteria that apply to the issue under review. See Rule 12D-9.025(2)(b), F.A.C.

* This description means the evidence meets or exceeds a minimum level of relevance necessary to be admitted for consideration, but does not necessarily mean that the evidence has sufficient relevance to legally justify a particular conclusion. See Rule 12D-9.025(2)(b), F.A.C.

In evaluating the relevance of evidence, the Board or special magistrate must consider, as of the January 1 assessment date, how well the evidence relates to the petitioned property or property owner, as applicable, and to the statutory criteria that apply.

Presented below is some information on relevant evidence from recognized sources.

"Relevant evidence is evidence tending to prove or disprove a material fact." See Section 90.401, F.S.

"In order for evidence to be relevant, it must have a logical tendency to prove or disprove a fact which is of consequence to the outcome of the action. The definition of relevant evidence in section 90.401 combines the traditional principles of 'relevancy' and 'materiality.' The concept of 'relevancy' has historically referred to whether the evidence has any logical tendency to prove or disprove a fact." See *Ehrhardt's Florida Evidence, 2008 Edition*, pages 126-127.

"Included within the section 90.401 definition of relevancy is the concept of materiality; the evidence must 'tend to prove or disprove a material fact.' When evidence is offered to prove a fact which is not a matter in issue, it is said to be immaterial." See *Ehrhardt's Florida Evidence, 2008 Edition*, page 129.

"In order to determine whether evidence has probative value, the fact for which it is offered to prove must be identified. Evidence may be probative of one fact and not of another." See *Ehrhardt's Florida Evidence, 2008 Edition*, pages 128-129.

"Whether the evidence has probative value is an issue for the discretion of the court." See *Ehrhardt's Florida Evidence, 2008 Edition*, page 129.

Evaluation of the Credibility of Evidence

For administrative reviews, "credible evidence" is evidence that is worthy of belief (believable). See *Black's Law Dictionary, Eighth Edition*, page 596.

The definition above means the evidence meets or exceeds a minimum level of credibility, but does not necessarily mean that the credible evidence has sufficient weight to legally justify a particular decision.

Generally, the two types of evidence presented in a Board hearing are testimonial evidence and documentary evidence.

* Testimonial evidence (testimony) means statements lawfully made by persons at the hearing.

* Documentary evidence means documentation lawfully presented by persons at the hearing.

To evaluate the credibility of evidence, the Board or special magistrate may consider factors such as the demeanor of the witnesses and the content, meaning, plausibility, consistency, reasonableness, and validity of the evidence.

The following excerpt on determining the credibility of expert witnesses appears in the Florida Standard Civil Jury Instructions, approved for publication by the Florida Supreme Court.

* *"You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case."*

It is important that Boards and special magistrates consider the credibility of a unit of evidence in light of all of the evidence.

A text on Florida evidence states the following on weighing testimonial evidence in a civil case.

* *"What counts is not the volume of the evidence but the quality—not how many witnesses testify but the persuasiveness of the testimony."* See *Ehrhardt's Florida Evidence, 2008 Edition*, pages 98-99.

How can the Board or special magistrate evaluate the credibility of documentary evidence (documents, photographs, etc.)?

Determining whether documentary evidence is authentic (genuine) is part of evaluating the credibility of the evidence. Genuine means the evidence is what it is claimed to be.

Documentary evidence may be authenticated by evaluating its appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with the circumstances. See ITT Real Estate Equities, Inc. v. Chandler Insurance Agency, Inc., 617 So.2d 750 (Fla. 4th DCA 1993).

Other considerations for evaluating documentary evidence may include: the relative roles of the item's creator and intended user; the effective date and intended use of the item; and whether the item is signed.

Requirements for Findings of Fact

Florida law requires that remand decisions, recommended decisions, and final decisions include findings of fact.

"Every decision of the board must contain specific and detailed findings of fact…" See Rule 12D-10.003(3), F.A.C.

Findings of fact must be produced and kept in writing.

As used in this training, the term "findings of fact" includes proposed findings of fact produced by special magistrates in their recommended decisions.

Findings of fact are written statements on factual conclusions based only upon the evidence or lack thereof.

For each of the statutory criteria for the issue under administrative review, the findings of fact must identify the corresponding admitted evidence or lack thereof. See Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

The Board legal counsel is responsible for providing the advice and assistance necessary to assure that findings of fact are produced in accordance with law.

Findings of fact must be sufficiently detailed for third parties to understand the findings, and to understand the evidence, or lack thereof, and reasoning on which the findings of fact must be based.

Each finding of fact must be properly annotated to its supporting evidence or lack thereof. See Rule 12D-10.003(3), F.A.C., referring to "basic and underlying finding." Also, see Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

Findings of fact are those findings on which the conclusions of law rest and which are supported by evidence or lack thereof. Findings of fact are more detailed than the conclusions of law but less detailed than a summary of the evidence. See Rule 12D-10.003(3)(b), F.A.C., referring to "basic and underlying findings" and "ultimate findings."

In arriving at the findings of fact, the Board or special magistrate must determine and consider the relevance and credibility of the evidence or lack thereof.

Tips for Producing Written Findings of Fact

The written findings of fact should:

1. Be based upon the relevance and credibility of the evidence or lack thereof;

2. Be reasonably related to statutory attributes of the subject property or, when applicable, to statutory attributes of the subject property owner;

3. Be expressed in terms of the statutory criteria that apply to the issue under administrative review;

4. Specifically identify the record evidence, or lack of record evidence, that relates to each of the statutory criteria that apply to the issue under administrative review, and specifically state how and why such evidence, or lack of evidence, relates to each of these criteria;

5. Be stated clearly, and answer the questions of "who, what, when, where, how, and why" regarding the evidence;

6. Provide clear support for the conclusions of law that are required in each of the steps set forth in Rule 12D-9.027, F.A.C., which apply to the issue under administrative review;

7. Provide reasons for upholding or overturning the property appraiser's determination; and

8. Otherwise meet all requirements of law.

Requirements for Conclusions of Law

Florida law requires that remand decisions, recommended decisions, and final decisions include conclusions of law.

Conclusions of law must be produced and kept in writing.

As used in this training, the term "conclusions of law" includes proposed conclusions of law produced by special magistrates in their recommended decisions.

A conclusion of law is a written statement specifying which part(s) of law apply to a finding of fact and stating how the law applies to the finding of fact.

Conclusions of law must be based on findings of fact. See Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

The Board attorney is responsible for providing the advice and assistance necessary to assure that conclusions of law are developed in accordance with law.

Conclusions of law must be sufficiently detailed for third parties to understand the conclusions of law, and to understand the evidence and facts on which the conclusions must be based.

A conclusion of law is usually expressed in the language of a statutory standard and must be supported by and flow rationally from the findings of fact. See Rule 12D-10.003(3)(a), F.A.C., referring to "ultimate finding" and "basic and underlying findings."

Tips for Producing Written Conclusions of Law

The written conclusions of law should:

1. Be based only upon the evidence, the findings of fact, and the provisions of law that apply to the issue under administrative review;

2. Be stated in terms of the provisions of law that apply to the substantive content of the administrative review (see Rule 12D-9.027, F.A.C.) and specifically state how and why the record evidence satisfies or fails to satisfy the applicable statutory criteria;

3. When stating a standard of proof, state only the standard of "preponderance of the evidence;" [See Section 194.301, F.S., as amended by Chapter 2009-121, Laws of Florida (House Bill 521)];

4. Specifically and separately address each of the steps set forth in Rule 12D-9.027, F.A.C., which apply to the issue under administrative review;

5. Provide reasons for upholding or overturning the property appraiser's determination; and

6. Otherwise meet all requirements of law.

Specific Requirements for Findings of Fact and Conclusions of Law

Florida law contains specific requirements for findings of fact and conclusions of law under certain conditions.

In each recommended decision and in each final decision, the conclusions of law must be based on findings of fact. For each of the statutory criteria for the issue under administrative review, the findings of fact must identify the corresponding admitted evidence or lack thereof. See Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

Rule 12D-9.021(8), F.A.C., provides that decisions issued under Rules 12D-9.021(6) or (7), F.A.C., shall not be treated as withdrawn or settled petitions and shall contain:

1. A finding of fact that the petitioner did not appear at the hearing and did not state good cause; and

2. A conclusion of law that the relief is denied and the decision is being issued in order that any right the petitioner may have to bring an action in circuit court is not impaired.

When producing a written remand decision under Rule 12D-9.029(6), F.A.C., the Board or special magistrate shall produce written findings of fact and conclusions of law necessary to determine that a remand is required. See Rule 12D-9.029(4), F.A.C.

Rule 12D-9.029(9)(b), F.A.C., provides that when a petitioner does not notify the Board clerk that the results of the property appraiser's written remand review are unacceptable to the petitioner and does not request a continuation hearing, or if the petitioner waives a continuation hearing, the Board or special magistrate shall issue a decision or recommended decision that 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.

Legal advice from the Board attorney relating to the facts of a petition or to the specific outcome of a decision, if in writing, shall be included in the record and referenced within the findings of fact and conclusions of law. See Rule 12D-9.030(6), F.A.C.

* If not in writing, legal advice from the Board attorney shall be documented within the findings of fact and conclusions of law. See Rule 12D-9.030(6), F.A.C.

Reasons for Recommended Decisions and Final Decisions

All recommended decisions and all final decisions must contain written reasons for upholding or overturning the property appraiser's determination. See Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C.

Reasons are those clearly stated grounds upon which the Board acted. See Rule 12D-10.003(3)(c), F.A.C.

Reasons for upholding or overturning a particular determination of the property appraiser must be based only upon the evidence, the findings of fact, and the conclusions of law for that petition.

Reasons should be sufficiently detailed for the parties to understand the reasons, and to understand the evidence, facts, and law on which the reasons must be based.

Reasons should be expressed in findings of fact and conclusions of law.