

FLORIDA DEPARTMENT OF REVENUE
PROPERTY TAX OVERSIGHT PROGRAM
CREATING RULE CHAPTER 12D-9

UNIFORM RULES OF PROCEDURE FOR HEARINGS
BEFORE VALUE ADJUSTMENT BOARDS

12D-9.101 Scope of These Uniform Rules of Procedure.

(1) These rules of procedure apply in all proceedings before the local value adjustment boards and the board's special magistrates.

(2) Nothing in these rules shall be construed to prohibit a taxpayer from pursuing his or her rights to bring an action in circuit court as provided in Section 194.036, Florida Statutes. Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented s. 3, Ch. 2008-197, L.O.F., 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022 FS. History-
New _____.

12D-9.102 Definitions.

(1) "Agent" means any person who is authorized to represent the taxpayer in a hearing before the board, including a family member.

(2) "Board" means the local value adjustment board.

(3) "Clerk" means the clerk of the local value adjustment board.

(4) "Department," unless otherwise designated, means the Department of Revenue.

(5) "Good cause" means the showing of particular extenuating circumstances, as follows:

(a) 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,

(b) physical or mental illness, infirmity, or disability that would reasonably affect the taxpayer's ability to timely file; or,

(c) miscommunication with, or misinformation received from, the clerk, property appraiser staff, or an agent regarding the necessity or the proper procedure for filing; or,

(d) failure to receive a copy of a notice from the clerk through no fault of the taxpayer (e.g. mailed to the wrong address due to clerical error); or,

(e) any other cause that would prevent a reasonably prudent taxpayer from timely filing.

(6) "Hearing" includes any hearing relating to a petition before a value adjustment board or special magistrate, regardless of whether the parties are physically present or whether telephonic or other electronic media is used to conduct the hearing.

(7) "Party" means the property appraiser, the property appraiser's employee, or the appraiser's designee, and the taxpayer or the taxpayer's agent.

(8) "Petitioner" means the taxpayer or the taxpayer as represented by an agent.

(9) "Rendered" means the written decision has been signed, dated, and received by the clerk.

(10) "Service" means providing a document to the taxpayer or the taxpayer's attorney or agent or providing a document to the property appraiser.

(11) "Special magistrate" means, where applicable, a person designated by the board to hear petitions filed with the board.

(12) "Taxpayer" means the person or other legal entity in whose name property is assessed including an agent of a timeshare period holder, or a person contesting the assessment of any tax, the payment of which he or she is responsible for under a statute or a person who is

responsible for the entire tax payment pursuant to a contract and has the written consent of the property owner.

(13) “Verbatim record” means:

(a) the complete, unedited body of material that corresponds word for word to the original source or text.

(b) any type of written, photographic, or electronic record, including audio, video, or other electronic media.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented ss. 3 and 5, Ch. 2008-197, L.O.F., 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022 FS. History-New _____.

12D-9.103 Duties of the Board.

(1) The board shall hold an organizational meeting, after public notice of the date, time, location, and purpose of the meeting, at least once a year. Topics which must be discussed at this meeting include:

(a) 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, copies of which must be available to the public at this meeting.

(b) The general requirements of Florida’s Government in the Sunshine / open government laws. A current copy of the Government-In-The-Sunshine manual must be provided to any board member who does not have one.

(c) General information on Florida’s property tax structure, and how it is administered.

(2) The board shall include statements about the existence and availability of these uniform rules of procedure in any notice of hearing and on the board's website, if there is one.

(3) The board shall:

(a) Conduct proceedings in an orderly, dignified, and fair manner without bias toward or against any witness or party.

(b) Adhere to the schedule of hearings established by the clerk as closely as possible, without impairing either party's right to be heard.

(4) Upon the request of either party, the chairperson of the board, the clerk of the board, the special magistrate, or any person authorized by state law shall swear in all witnesses in that proceeding on the record, even if the witnesses have been sworn in during a previous proceeding.

(5) In those counties with populations of 75,000 or less that have decided to not use special magistrates, all members of the board or the board's attorney must complete the required statutory training before conducting any hearings.

(6) The board shall ensure that the selection of special magistrates is based solely upon the experience and qualifications of the special magistrate and is not influenced by the property appraiser.

(7)(a) Value adjustment boards may have additional internal operating procedures, not rules, that do not conflict with, change, suspend, or negate the rules adopted in this chapter, the Florida Statutes, or case law.

(b) These internal operating procedures include methods for creating the verbatim record, provisions for parking by participants, assignment of hearing rooms, and compliance with the Americans with Disabilities Act.

(8) The board must ensure that the board itself, and its special magistrates, hold meetings and hearings only following proper notice as provided in Section 286.011, Florida Statutes.

(9) In cases where petitions were filed but not considered by the board or special magistrate because such petitions were withdrawn or settled prior to the board's consideration, the board or special magistrate need not enter a written decision containing findings of fact and conclusions of law from a fact finding hearing. In such cases, and in cases where the board adopts a settlement or withdrawal, the board must render a notice of decision form for each such petition. The board shall note in its decision the reasons for its action, such as: petition acknowledged as correct by the property appraiser, settlement, or withdrawal of the petition. Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented s. 3, Ch. 2008-197, L.O.F., 194.011, 194.015, 194.032, 194.034 FS. History-New

12D-9.104 Duties of the Clerk.

(1)(a) The property appraiser shall make available to the clerk and to any other party copies of the blank petition form adopted by the Department pursuant to Rule 12D-9.106.

(b) A taxpayer or agent must be able to obtain a blank petition form from any of the following sources: the property appraiser, the clerk, and the Department.

(c) The clerk shall accept all completed petitions, as defined by statute and Rule 12D-9.106, and shall forward a copy of the petition to the property appraiser. If, in the petition, the taxpayer requested a copy of the property record card, the property appraiser shall forward a copy of the property record card to the clerk. The clerk shall provide to the taxpayer a copy of the property record card along with the notice of hearing, if requested in the petition.

(2) The clerk shall provide copies of the special magistrate's recommended decision to the taxpayer and the property appraiser as soon as practicable after receiving the recommended decision, and, if the clerk:

(a) Knows the date, time, and place at which the recommended decision will be considered by the board, then the clerk shall include such information when he or she sends the recommended decision to the taxpayer or the taxpayer's agent and the property appraiser.

(b) Does not yet know the date, time, and place at which the recommended decision will be considered by the board, then such information must be sent by the clerk at a later date by supplemental and reasonable notice.

(3) The clerk shall maintain a record of the proceeding.

(a) The record shall consist of the verbatim record of the proceeding and proof of any documentary evidence presented.

(b) The record shall be maintained for four years after the final decision has been rendered by the board if no appeal is filed in circuit court, or for five years if an appeal is filed.

(c) If requested by the taxpayer, the taxpayer's agent, or the property appraiser, the clerk shall retain these records until the final disposition of any subsequent judicial proceeding related to the same property.

(4) The clerk shall have such other duties as set forth elsewhere in these rules and in the Florida Statutes.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented s. 3, Ch. 2008-197, L.O.F., 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022 FS. History-

New _____.

12D-9.105 Authority and Duties of Special Magistrates.

(1)(a) Special magistrates appointed by the board act in place of the board except for rendering a final decision. Proceedings before the special magistrate shall meet all basic requirements of a proceeding before the board in accordance with Section 194.034, Florida Statutes.

(b) The board may consider good cause requests to accept petitions filed late by taxpayers, or may designate the clerk, the board attorney, or a special magistrate to consider such requests.

(2) Special magistrates shall conduct proceedings in an orderly, dignified, and fair manner without bias toward or against any witness or party.

(3) Special magistrates shall adhere as closely as possible to the schedule of hearings established by the clerk, without impairing either party's right to be heard.

(4) Upon the request of either party, a special magistrate shall swear in all witnesses in that proceeding on the record, even if the witnesses have been sworn in during a previous proceeding.

(5)(a) Special magistrates shall receive, mark, and retain all exhibits admitted during the hearing and send them to the clerk along with the recommended decision.

(6)(a) The special magistrate shall issue a timely, recommended decision in writing which contains findings of fact and conclusions of law for upholding, partially upholding, or overturning the determination of the property appraiser.

(b) For the purpose of documenting the recommended decisions of the special magistrate, the Department prescribes Form DR-_____, hereby incorporated by reference. The Form DR-_____ is the only form approved for the purposes required in this rule.

(7) To avoid the appearance of a conflict of interest, special magistrates shall refrain from conversations with any party, before, during, and after a hearing, including breaks during such hearing.

(8) All special magistrates shall have the qualifications specified in Section 194.035, Florida Statutes.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented ss. 3 and 5, Ch. 2008-197, L.O.F., 194.011, 194.032, 194.034, 194.035, 195.022 FS. History-New _____.

12D-9.106 Petition.

(1)(a) The clerk shall accept for filing any petition that is complete and is timely submitted on a form approved by the Department, with payment if required.

(b) A “complete” petition is one that provides information for all the required elements that are displayed above the sworn statement by the taxpayer.

(c) If the taxpayer or agent’s name, address, telephone, or similar contact information on the petition changes before the hearing, the taxpayer or agent shall notify the clerk in writing.

(d)1. For the purpose of requesting a hearing before the value adjustment board the Department prescribes Form DR- _____, hereby incorporated by reference.

2. In accordance with Section 194.011(3), Florida Statutes, the Department is required to prescribe petition forms. The Department will not approve any local version of this form.

(2)(a) The board may not extend the time for filing a petition.

(b) The clerk shall accept but not file a petition submitted to the board after the statutory deadline has expired, and submit the petition to the board for good cause consideration if the petition is accompanied by a written explanation for the delay in filing.

(c) The board or the board's designee (which includes the clerk, the board's attorney, or an attorney special magistrate), shall determine whether the taxpayer has demonstrated in writing good cause justifying consideration of the petition. If the board or the board's designee (which includes the clerk, the board's attorney, or an attorney special magistrate), determines that the taxpayer has demonstrated good cause, the board or the board's designee (which includes the clerk, the board's attorney, or an attorney special magistrate), shall accept the petition for filing and so notify the taxpayer and the property appraiser or tax collector.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented s. 3, Ch. 2008-197, L.O.F., 194.011, 194.013, 194.032, 194.034, 195.022 FS. History-New _____.

12D-9.107 Representation of the Taxpayer.

(1) A taxpayer has the right, at the taxpayer's own expense, to be represented by an attorney or by an agent.

(2) An attorney means a member of The Florida Bar or a law student certified pursuant to Chapter 11 of the Rules Regulating The Florida Bar.

(3) An agent is anyone who is authorized to represent a taxpayer.

(4) Service on the taxpayer's attorney or agent is the equivalent of service on the taxpayer.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented s. 3, Ch. 2008-197, L.O.F., 194.011, 194.013, 194.032, 194.034, 195.022 FS. History-New _____.

12D-9.108 Standards of Conduct.

(1) The following standards of conduct are mandatory for all participants, including the special magistrate and board members:

(a) All participants must obey the law, and advise those under their direction or supervision to also obey the law; and,

(b) No participant shall engage in conduct involving a conflict of interest or appearance of a conflict of interest, dishonesty, fraud, the offer or acceptance of gifts, favors, or preferential treatment, deceit, threatening behavior, or misrepresentation, and such conduct is prohibited; and,

(c) No participant shall engage in conduct that is prejudicial to the administration of justice; and,

(d) No participant shall communicate, or cause another to communicate, as to the merits of the petition with the board or, where applicable, the special magistrate, except during the hearing.

(2) Attorneys representing any party are governed by the rules regulating The Florida Bar.

(3) A violation of these standards of conduct at a hearing before the special magistrate or the board may result in the special magistrate or the board referring the matter to the Florida Commission on Ethics or other authority as provided by law.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented ss. 3 and 5, Ch. 2008-197, L.O.F., 194.011, 194.013, 194.032, 194.034, 194.035 FS. History-New _____.

12D-9.109 Filing and Service.

(1) In construing these rules or any order of the board or special magistrate, filing shall mean received by the clerk during open hours or by the board or special magistrate during a meeting or hearing.

(2)(a) Any hand-delivered or mailed document received by the office of the clerk after open hours shall be filed the next regular business day.

(b) If the clerk accepts documents filed electronically, documents received on or after 12 midnight of the day they are due shall be filed the next regular business day.

(3) Whenever a party files a document other than the petition with the board, that party shall provide copies of the document to all parties in the proceeding. A signed statement or other indication that a copy has been provided to all parties must accompany the document filed with the board.

(4) Any party who elects to file any document by 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 clerk as a result.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented s. 3, Ch. 2008-197, L.O.F., 194.011, 194.013, 194.015, 194.032, 194.034, 195.022 FS. History-New _____.

12D-9.110 Exchange of Evidence.—The provisions of subsections (2), (3), (4), (5), (6), (9), and (10) of Rule 12D-10.0044 apply to the exchange of evidence between the petitioner and the property appraiser.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented s. 3, Ch. 2008-197, L.O.F., 194.011, 194.032, 194.034 FS. History-New _____.

12D-9.111 Notice of Hearing; Scheduling of Hearings; 4-Hour Rule; Presentation of Evidence; Testimony of Witnesses; Conducting Hearings by Electronic Media.

(1) The clerk shall prepare a schedule of appearances before the board based on timely filed petitions, and shall notify each petitioner of the scheduled time of appearance. The clerk shall electronically send this notification to the petitioner, if the petitioner indicates on his or her petition that they want to receive notices, materials, and communications electronically.

(2) The notice shall be in writing, and delivered by regular or certified U.S. mail or personal delivery, or in the manner requested by the taxpayer on Form DR-_____, so that the notice shall be received by the taxpayer no less than twenty-five (25) calendar days prior to the day of such scheduled appearance. If the taxpayer has requested in the petition a copy of the property record card, it shall be included with the notice of hearing.

(3) The taxpayer may reschedule the hearing one time by submitting a written request to the clerk of the board no fewer than 5 calendar days before the scheduled appearance.

(4) A request to re-schedule the hearing made fewer than 5 calendar days before the scheduled hearing may be made only for an emergency when good cause is shown. Such a request shall be made to the clerk who shall forward the request to the board or the board's designee (which includes the clerk, the board's attorney, or an attorney special magistrate).

(a) If the board or the board's designee (which includes the clerk, the board's attorney, or an attorney special magistrate), determines that the request does not show good cause, the request will be denied and the board may proceed with the hearing as scheduled based upon the evidence submitted.

(b) If the board or the board's designee (which includes the clerk, the board's attorney, or an attorney special magistrate), determines that the request demonstrates good cause, the request

will be granted. In that event, the clerk will issue a notice of hearing with the new hearing date, which shall be the earliest date that is convenient for all parties.

(c) When rescheduling hearings under this rule subsection, if the parties are unable to agree on an earlier date, the 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-_____, so that the notice shall be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance.

(5) If a hearing is rescheduled, the deadlines for the exchange of evidence shall be computed from the new hearing date if time permits.

(6) If a taxpayer's hearing has not started within four hours of the scheduled time, the taxpayer can request to be heard immediately, or have the hearing rescheduled, or have the petition withdrawn.

(7) If a hearing on a petition is called within four hours and a participant who has not withdrawn their petition does not appear or is not present when the petition is called, the board or special magistrate is not precluded from considering the petition. In that event, the petition, together with any documentation which has been exchanged with the property appraiser, shall be used by the special magistrate to enter a recommended decision or by the board to enter its final decision on the petition.

(8) No evidence shall be considered by the board or special magistrate except when presented during the time scheduled for the taxpayer's hearing, or at a time when the taxpayer has been given reasonable notice.

(9) Witnesses for either party may be cross-examined by the other party when testimony is taken.

(10)(a) Any participant in a hearing may request that it be conducted using telephonic or other electronic media.

(b) If all participants agree to use telephonic or other electronic media to conduct the hearing, they 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.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented s. 3, Ch. 2008-197, L.O.F., 194.011, 194.032, 194.034, 195.022 FS. History-New .

12D-9.112 Disqualification or Recusal of Special Magistrates.

(1) If either the petitioner or the property appraiser has a reasonable belief that the special magistrate does not possess the statutory requirements in accordance with Sections 194.035 and 475.611(1)(h) and (i), Florida Statutes, to conduct a particular proceeding, the basis for that belief shall be included in the record of the proceeding.

(2)(a) Upon review, if the board or its attorney determines that they are not satisfied that the special magistrate meets the statutory requirements and qualifications, the board shall appoint a different special magistrate to hear the petition.

(b) Upon review, if the board or its attorney determines that the special magistrate does meet the statutory requirements and qualifications, such determination shall be issued in writing and placed in the record, and the special magistrate will conduct the hearing.

(3) Part III of Chapter 112, Florida Statutes, provides standards of conduct for local officials. If the parties to the petition being heard by special magistrates are engaging in conduct

to influence the outcome of any hearing in favor of any party by collusion, coercion, threats, or other illegal conduct, such conduct may be reported to the Florida Commission on Ethics.

(4) Special magistrates shall recuse themselves from hearing a petition when they have a conflict of interest or an appearance of a conflict of interest.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented ss. 3 and 5, Ch. 2008-197, L.O.F., 194.011, 194.032, 194.034, 194.035 FS. History-New .

12D-9.113 Ex Parte Communication Prohibition.

(1) No participant, including the taxpayer, the property appraiser, the clerk, the special magistrate, a member of a value adjustment board, or other person directly or indirectly interested in the proceeding, nor anyone authorized to act on behalf of any participant shall communicate with a member of the board or the special magistrate regarding the issues in the case without the other participant being present or without providing a copy of any written communication to the other participant.

(2) Any attempt by the taxpayer, taxpayer's agent, or the property appraiser to communicate privately with, threaten, or offer any reward to a member of the board or the special magistrate shall be immediately placed on the record by the board member or special magistrate if done during the hearing or shall be memorialized in writing and filed with the clerk if done before the hearing or after the hearing with the special magistrate but before the board enters its final decision.

(3) The ex parte communication shall not be considered by the board or the special magistrate unless all participants have been notified about the ex parte communication, and it relates to the issues in the case, and no participant objects, and all participants have an

opportunity during the hearing to cross-examine, object, or otherwise address the communication.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented ss. 3 and 5, Ch. 2008-197, L.O.F., 194.011, 194.015, 194.032, 194.034, 194.035 FS. History-New _____.

12D-9.114 Recordation.—The verbatim record of the hearing may be kept by any electronic means which is easily retrieved and copied. During the hearing the special magistrate shall accurately and completely preserve the verbatim record. At the conclusion of the hearing, the special magistrate shall provide the verbatim record to the clerk.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented s. 5, Ch. 2008-197, L.O.F., 194.011, 194.032, 194.034, 194.035 FS. History-New _____.

12D-9.115 Final Decisions.

(1)(a) The board shall adopt the recommended decision of the special magistrate unless it determines, after reviewing the entire record, that the special magistrate failed to consider evidence admitted during the hearing or has made an incorrect legal determination.

(b) If the board does not adopt the recommended decision, the board's final decision shall contain an explanation of the basis for rejecting the special magistrate's recommended decision.

(2) All final decisions of the board shall be in writing and shall:

(a) For hearings conducted by a special magistrate:

1. Adopt the recommendations of the special magistrate; or,

2. Contain specific and detailed findings of fact and conclusions of law for any part of the recommendations of the special magistrate not adopted.

(b) For hearings conducted by the board:

1. Contain specific and detailed findings of fact and conclusions of law.

2. Explain the nature of any change made and indicate the just, assessed, taxable, and exempt value before and after the change, if any.

(c) For petitions not heard or considered by the board because they are withdrawn or settled prior to the board's hearing or considering them, contain a statement that:

1. The board adopts the settlement or withdrawal; or,

2. The petition is acknowledged as correct by the property appraiser.

(3) The board shall advise the taxpayer and property appraiser that further proceedings in circuit court shall be as provided in Section 194.036, Florida Statutes.

(4) For the purpose of documenting final decisions of the board the Department prescribes Form DR-_____, hereby incorporated by reference. The Form DR-_____ is the only form approved for the purposes described in this rule.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented ss. 3, 4, and 5, Ch. 2008-197, L.O.F., 194.011, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022 FS. History-
New _____.

12D-9.116 Further Judicial Proceedings.— After the board issues its final decision, further proceedings and the timing thereof are as provided in Sections 194.036 and 194.171, Florida Statutes.

Specific Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented s. 3, Ch. 2008-197, L.O.F., 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022 FS. History-
New _____.