

DEPARTMENT OF REVENUE

RULE NO.: RULE TITLE:

- 12D-9.005 Duties of the Board
- 12D-9.007 Role of the Clerk of the Value Adjustment Board
- 12D-9.012 Training of Special Magistrates, Value Adjustment Board Members and Legal Counsel.
- 12D-9.018 Representation of the Taxpayer.
- 12D-9.022 Disqualification or Recusal of Special Magistrates or Board Members
- 12D-9.027 Process of Administrative Review
- 12D-9.032 Final Decisions

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rules in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 35, September 4, 2009, issue of the Florida Administrative Weekly.

The following changes apply to the proposed rules published on September 4, 2009 and , where applicable, as subsequently revised by a Notice of Change published in the January 22, 2010, issue of the Weekly (Vol. 36, No. 3, pp. 390-405). The changes published in this Notice of Change supersede changes to any previous versions of the same provisions contained in the proposed rules as originally published on September 4, 2009, and, where applicable, subsequently revised in the Notice of Change published on January 22, 2010. These changes are in accordance with subparagraph 120.54(3)(d)1., F.S.

The Department has made two technical changes to phrases that are used throughout the proposed new rules in Rule Chapter 12D-9, as originally published in the Notice of Proposed

Rule on September 4, 2009, and subsequently revised in the Notice of Change published on January 22, 2010. One technical change is to change the phrase “clerk of the board” or the word “clerk,” wherever this phrase or word appeared in the previously published proposed rules, to instead read “board clerk”. The other technical change is to change the phrase “legal counsel to the board,” wherever this phrase appeared in the previously published proposed rules, to instead read “board legal counsel”.

A revised redline version of the proposed new rules in Rule Chapter 12D-9 will be available at <http://dor.myflorida.com/dor/property/vab/rules.html>. This redline version shows each addition and deletion to the proposed rules that were originally published in the Notice of Proposed Rule on September 4, 2009, as revised by the Notice of Change published on January 22, 2010.

12D-9.001 Taxpayer Rights in Value Adjustment Board Proceedings. – No change, as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.002 Informal Conference Procedures. – No change, as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.003 Definitions. – No change, as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.004 Composition of the Value Adjustment Board. – No change, as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.005 Duties of the Board.

When adopted, subsection (1)(a) of Rule 12D-9.005, as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010, will read as follows:

(1)(a) The value adjustment board shall meet not earlier than 30 days and not later than 60 days after the mailing of the notice provided in Section 194.011(1), Florida Statutes; 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. The board shall meet for the following purposes:

Subsections (1)(a)1. through (5) – No change to the proposed text as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.006 Clerk of the Value Adjustment Board. – No change as originally published on September 4, 2009. There were no subsequent revisions in the Notice of Change published on January 22, 2010.

12D-9.007 Role of the Clerk of the Value Adjustment Board.

Subsections (1) through (7) – No change to the proposed text as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

When adopted, subsection (8) of Rule 12D-9.007, will read as follows:

(8) The board clerk shall ensure public notice of and access to all hearings. Such notice shall contain a general description of the locations, dates, and times hearings are being scheduled. This notice requirement may be satisfied by making such notice available on the board clerk's website. 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. The board clerk shall assure proper signage to identify such facilities.

Subsections (9) through (15) – No change to the proposed text as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.008 Appointment of Legal Counsel to the Value Adjustment Board. – No change as originally published on September 4, 2009. There were no subsequent revisions in the Notice of Change published on January 22, 2010.

12D-9.009 Role of Legal Counsel to the Board. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.010 Appointment of Special Magistrates to the Value Adjustment Board. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.011 Role of Special Magistrates to the Value Adjustment Board. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.012 Training of Special Magistrates, Value Adjustment Board Members and Legal Counsel.

Subsections (1) through (5) – No change to the proposed text as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

When adopted, subsection (6) of Rule 12D-9.012 will read as follows:

(6) Meetings or orientations for special magistrates, for any instructional purposes relating to procedures for hearings, handling or consideration of petitions, evidence, worksheets, forms, decisions or related computer files, must be open to the public for observation. Such 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.

12D-9.013 Organizational Meeting of the Value Adjustment Board.

Subsections (1) through (3) – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 213.05, 286.011, 286.0105 FS. History-New_____.

12D-9.014 Prehearing Checklist. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.015 Petition; Form and Filing Fee. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.016 Filing and Service. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.017 Ex Parte Communication Prohibition. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.018 Representation of the Taxpayer.
Subsections (1) through (4) – No change to the proposed text as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

When adopted, subsection (5) of Rule 12D-9.018, will read as follows:

(5) As used in this rule chapter, the term “licensed” refers to holding a license or certification

under Chapter 473, Florida Statutes, or membership in the Florida Bar.

Subsections (6) through (7) – No change to the proposed text as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.032, 194.034, 195.022, 195.084, 213.05, Chapter 473, Chapter 475, Part I and II FS. History-New_____.

12D-9.019 Scheduling and Notice of a Hearing. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.020 Exchange of Evidence. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.021 Withdrawn or Settled Petitions; Petitions Acknowledged as Correct; Non Appearance; Summary Disposition of Petitions. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.022 Disqualification or Recusal of Special Magistrates or Board Members.

Subsections (1) through (3) – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

When adopted, subsection (4)(a) of Rule 12D-9.022, will read as follows:

(4)(a) 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 stated in the record of the proceeding or submitted prior to the hearing in writing to the board legal counsel.

Subsection (4)(b) – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

When adopted, paragraphs (4)(c), (d), and (e), and subsection (5) of Rule 12D-9.022, will read as follows:

(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..

(d) 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.

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.

(e) 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.

(5) 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.

12D-9.023 Hearings Before Board or Special Magistrates. – No change as originally published on September 4, 2009. There were no subsequent revisions to this rule in the Notice of Change published on January 22, 2010.

12D-9.024 Procedures for Commencement of a Hearing. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.025 Procedures for Conducting a Hearing; Presentation of Evidence; Testimony of Witnesses. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.026 Procedures for Conducting a Hearing by Electronic Media. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.027 Process of Administrative Review.
Subsections (1) through (3)(c)2. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

When adopted, subparagraphs (3)(c)3. and 4. of Rule 12D-9.027, will read as follows:

3. 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 which cumulatively meets the statutory criteria that apply to the classified use valuation of the petitioned 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.

4. If the property appraiser establishes a presumption of correctness and that the presumption of correctness is not overcome as described in subparagraph (c)1. above, the assessment stands.

Paragraph (3)(d) through paragraph (6)(e) – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010

12D-9.028 Petitions on Transfer of “Portability” Assessment Difference. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.029 Procedures for Remanding Value Assessments to the Property Appraiser. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.030 Recommended Decisions. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.031 Consideration and Adoption of Recommended Decisions of Special Magistrates by Value Adjustment Boards in Administrative Reviews. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.032 Final Decisions.

When adopted, subsection (1)(a) of Rule 12D-9.032, as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010, will read as follows:

(1)(a) 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. 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. 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. The

incorporating the recommended decision, using a postcard or similar notice. The board shall ensure regular and timely approval of recommended decisions.

Subsections (1)(b) through (7) – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.033 Further Judicial Proceedings. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.034 Record of the Proceeding. – No change as originally published on September 4, 2009. There were no subsequent revisions to this rule in the Notice of Change published on January 22, 2010.

12D-9.035 Duty of Clerk to Prepare and Transmit Record. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.036 Procedures for Petitions on Denials of Tax Deferrals. – No change as originally published on September 4, 2009. There were no subsequent revisions in the Notice of Change published on January 22, 2010.

Part III

Uniform Certification of Assessment Rolls

12D-9.037 Certification of Assessment Rolls. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.

12D-9.038 Public Notice of Findings and Results of Value Adjustment Board. – No change as originally published on September 4, 2009, and subsequently revised in a Notice of Change published on January 22, 2010.